THE GENERAL STATUTES OF NORTH CAROLINA

1977 CUMULATIVE SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND SYLVIA FAULKNER

Volume 3C

1974 Replacement

Annotated through 292 N.C. 643 and 33 N.C. App. 240. For complete scope of annotations, see scope of volume page.

Place with Corresponding Volume of Main Set. This Supersedes Previous Pocket Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Replacement Volume 3C contains the general laws of a permanent nature enacted at the Second 1973, the First and Second 1975 and the 1977 Sessions of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein. At the Second 1973 Session, which was held in 1974, the General Assembly enacted Session Laws 1973, Chapters 827 to 1482.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the Second 1973, the First and Second 1975 and the 1977 Sessions of the General Assembly affecting Chapters 137 through 156 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 283 (p. 589)-292 (p. 643).
North Carolina Court of Appeals Reports volumes 18 (p. 352)-33 (p. 240).
Federal Reporter 2nd Series volumes 476 (p. 657)-554 (p. 1074).
Federal Supplement volumes 357-431 (p. 434).
Federal Rules Decisions volumes 56 (p. 663)-74 (p. 213).
United States Reports volumes 411 (p. 526)-419 (p. 984).
Supreme Court Reporter volumes 93 (p. 2789)-97 (p. 2204).
North Carolina Law Review volume 55 (pp. 1-750).
Wake Forest Intramural Law Review volumes 6 (p. 569)-13 (p. 269).
Duke Law Journal volumes 3 (p. 485)-6 (p. 1395).
North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).
Opinions of the Attorney General.

The General Statutes of North Carolina
1977 Cumulative Supplement

VOLUME 3C

Chapter 138.

Salaries, Fees and Allowances.

Sec.
138-1. Annual salaries payable monthly.
138-5. Per diem and allowances of State boards, etc.
138-6. Travel allowances of State officers and employees.
138-8. Moving expenses of State employees.

§ 138-1. Annual salaries payable monthly. — All annual salaries shall be paid monthly except employees of the institutions of the Department of Human Resources may be paid biweekly effective July 1, 1974. (Code, s. 3731; 1893, c. 54; Rev., s. 2772; C. S., s. 3847; 1925, c. 230; 1928, c. 100; 1973, c. 1430.)

Editor's Note. — The 1973 amendment added the exception.

§ 138-5. Per diem and allowances of State boards, etc. — (a) Except as provided in subsection (c) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Compensation at the rate of fifteen dollars ($15.00) per diem for each day of service;

(2) A subsistence allowance of

a. Fifteen dollars ($15.00) per day for each day of service when the member did not spend the night away from his home,

b. Thirty-five dollars ($35.00) per day for each day of service when the member spent the night away from his home;

(3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).

(4) For convention registration fees, the actual amount expended, as shown by receipt.

(b) Except as provided in subsection (c) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowances as are provided for members of the General Assembly for services on interim legislative committees.

(d) The subsistence allowances provided in this section shall be paid without requiring the claimant to file any vouchers covering actual expenditures for meals or lodging.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397.)

Editor's Note. —
The 1973 amendment, effective July 1, 1974, rewrote subsections (a) through (c), added present subsection (d) and designated former subsection (d) as (e). In present subsection (e), the amendment substituted a comma for "and" following "commissions" and inserted "and councils."

§ 138-6. Travel allowances of State officers and employees. — (a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, fifteen cents (15¢) per mile of travel and the actual cost of tolls paid;
(2) For bus, railroad, Pullman, or other conveyance, actual fare;
(3) In lieu of actual expenses incurred for subsistence, payment of twenty-three dollars ($23.00) per day when traveling in-state or thirty-five dollars ($35.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. This shall not apply to those employees who are employed by the North Carolina State Burial Association Commission.
(4) For convention registration fees, not to exceed fifteen dollars ($15.00) per convention.

(1973, c. 1456; 1975, c. 892, s. 1; 1977, c. 928.)

Cross Reference. — For provisions authorizing the Commissioner of Insurance to pay examiners an amount in lieu of traveling expenses, see § 58-63(3).

Editor's Note. —
The second 1973 amendment, effective July 1, 1974, substituted "fifteen cents (15¢)" for "eleven cents (11¢)" in subdivision (a)(1).

The 1975 amendment, effective July 1, 1975, increased the amounts from $19.00 to $23.00 and from $25.00 to $35.00 in subdivision (a)(3).

The 1977 amendment, effective July 1, 1977, in subdivision (a)(3), added "In lieu of actual expenses incurred" to the beginning of the first sentence, substituted "payment of" for "the actual amount expended for room, meals and reasonable gratuities not to exceed" and deleted "a total of" preceding "thirty-five dollars ($35.00)" in the first sentence, and added the second and third sentences.

Session Laws 1975, c. 892, s. 2, provides that the heads of departments shall administer the provisions of subdivision (a)(3) in a manner to assure that those provisions are funded from within existing authorized budgets.

As subsection (b) was not changed by the amendments, it is not set out.

Reimbursement of State Officers and Employees Traveling in Privately Owned Automobiles on Official Business. — State officers and employees are entitled to be reimbursed at a rate of fifteen cents (15¢) per mile traveled when privately owned automobiles are used in pursuance of official State business, regardless of the number of miles traveled. Opinion of Attorney General to Honorable Donald L. Smith, 45 N.C.A.G. 168 (1975).

§ 138-8. Moving expenses of State employees. — Subject to the rules and regulations promulgated by the Department of Administration and approved by the Director of the Budget, any department, institution or agency of the State is hereby authorized to pay, from funds available to it, reasonable expenses for transporting the household goods of an employee and members of his household

when the transfer of the employee is considered by the Director of the Budget to be in the best interests of the State. (1977, c. 802, s. 15.)

Editor's Note. — Session Laws 1977, c. 802, s. 54, makes this section effective July 1, 1977.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

Chapter 139.

Soil and Water Conservation Districts.

Article 1.

General Provisions.

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139-5. Creation of soil and water conservation districts.
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139-7. District board of supervisors — appointive members; organization of board; certain powers and duties.
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Article 2.

Watershed Improvement Districts.

139-18. Notice and hearing on petition; determination of need for district and defining boundaries.
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Sec.
139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds.
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139-35. Supervision by Environmental Management Commission.
139-36. Dissolution of watershed improvement district.
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Article 3.

Watershed Improvement Programs; Expenditure by Counties.

139-41. Powers of county commissioners.
139-46. Recreational and related aspects of watershed improvement programs.
139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization.

ARTICLE 1.

General Provisions.

§ 139-3. Definitions. — Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(3) "Environmental Management Commission" or "State Environmental Management Commission" means the Environmental Management Commission of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Environmental Management Commission.

(4) "Commission" or "Soil and Water Conservation Commission" means the agency created in G.S. 139-4.

(1973, c. 1262, s. 38.)

Cross References. — As to the Environmental Management Commission, see §§ 143B-282 through 143B-285. As to the Soil and Water Conservation Commission, see §§ 143B-294 through 143B-297.

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and for "Board of Water Resources" in subdivision (3) and substituted "Commission" for "Committee" and "Soil and Water Conservation Commission" for "State Soil Conservation Committee" in subdivision (4).

Session Laws 1973, c. 1262, s. 38, provides that whenever the words "State Soil and Water Conservation Committee" or the words "State Committee" or "Committee" when referring to the State Soil and Water Conservation Committee or the words "State Soil Conservation Committee" are used or appear in any statute or law of this State, they shall be deleted and the words "State Soil Conservation Commission" or "Commission," as appropriate, shall be substituted, unless otherwise provided in the Act. The agency created by s. 38 of the act (§ 143B-294), however, is designated the "Soil and Water Conservation Commission," and that

title has been used in subdivision (4) of this section as set out above, and in the other sections of this Chapter treated as amended by Session Laws 1973, c. 1262, s. 38.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (4) are set out.

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally. — (a) to (c) Repealed by Session Laws 1973, c. 1262, s. 38, effective July 1, 1974.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, repealed subsections (a) through (c), relating to the establishment, composition, organization, etc., of the State Soil and Water Conservation Committee and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Commission" for "State Committee" in subsection (d). See note to § 139-3.

§ 139-5. Creation of soil and water conservation districts. — (a) Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Soil and Water Conservation Commission asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the Soil and Water Conservation Commission duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the Commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the Soil and Water Conservation Commission may consolidate all or any such petitions.

Town or village lots or government-owned or controlled lands may be included within the boundaries of any district. As used in this subsection: The term "government-owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than two hundred and fifty dollars ($250.00) in value. This section applies to existing soil and water conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by other charters.

(b) Within 30 days after such a petition has been filed with the Soil and Water Conservation Commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Commission shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this Chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative

determination set forth in G.S. 139-2. The territory to be included within such boundaries need not be contiguous. If the Commission shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(c) After the Commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this Chapter is administratively practicable and feasible. To assist the Commission in the determination of such administrative practicability and feasibility, it shall be the duty of the Commission, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . . . , ... and . . . . . ." and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . . . and . . . . . ." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Commission. All occupiers of land lying within the boundaries of the territory, as determined by the Soil and Water Conservation Commission, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

(d) The Department of Natural Resources and Community Development shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The Department of Natural Resources and Community Development shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such

referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the Commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in G.S. 139-6 and 139-7. Such districts shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals):

(1) That a petition for the creation of the district was filed with the Soil and Water Conservation Commission pursuant to the provisions of this Chapter and that the proceedings specified in this Chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this Chapter; and that the Commission has appointed them as supervisors;

(2) The name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office;

(3) The name which is proposed for the district; and

(4) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the Soil and Water Conservation Commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Commission.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other

soil and water conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Soil and Water Conservation Commission, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Soil and Water Conservation Commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this Chapter.

(g) After six months shall have expired from the date of entry of a determination by the Soil and Water Conservation Commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Chapter.

(h) Petitions for including additional territory within an existing district may be filed with the Soil and Water Conservation Commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by two thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(i) In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4; 1959, c. 781, s. 6; 1965, c. 582, s. 3; 1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Committee" in the first sentences of subsections (d) and (e), substituted "Commission" for "Committee" and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" throughout the rest of the section. See note to § 139-3.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentences of subsections (d) and (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 139-6. District board of supervisors — elective members; certain duties. — After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections. No absentee ballots shall be permitted in the election.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4.)

Editor's note. — The 1975 amendment substituted "first Friday in July" for "second Friday in September" in the second sentence of the fourth paragraph.

§ 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties. — The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the elective supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons to the

Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required, to appoint one district supervisor without recommendation from the elective supervisors, to serve as a district supervisor along with the elected members of the board of supervisors. Such appointment shall be made at the same time other appointments are made under this section, and the person appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Natural Resources.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 31, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2; c. 1262, s. 38; 1977, c. 387.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Committee" in the first sentence of the first paragraph, substituted "Department of Natural and Economic Resources" for "State Committee" at the end of the third paragraph, substituted "Department" for "State Committee" in the first sentence of the fourth paragraph, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" in the fourth sentence of the fourth paragraph and in the second sentence of the fifth paragraph, and substituted "Commission" for "State Committee" throughout the rest of the section. See note to § 139-3.

The 1977 amendment, effective July 1, 1977, in the first paragraph, substituted "October 31, 1978, and on or before October 31" for "December 31, 1974, and on or before December 31" in the second sentence, substituted "November" for "January" in the fourth sentence, substituted "first Monday in December" for "third Wednesday in January" in the fifth sentence, combined the former sixth and seventh sentences by deleting "one for a term of four years" from the end of the former sixth sentence, substituted "Such appointive supervisors shall serve" for "one appointed supervisor shall be appointed" and "serve for a term" for "be appointed for terms" in the present sixth sentence, and added the present seventh sentence.

§ 139-8. Powers of districts and supervisors. — A soil and water conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Natural Resources and Community Development in cooperation with the United States Department of Agriculture.

(1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "State Forest Nursery, operated by the State Department of Conservation and Development" near the end of subdivision (8).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of subdivision (8).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivision (8) are set out.

§ 139-13. Discontinuance of districts. — At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the . . . . . (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the . . . . . (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert any X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of Natural Resources and Community Development shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of

such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years. (1937, c. 393, s. 13; 1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Committee" in the first sentence of the second paragraph and substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Commission" for "Committee" throughout the rest of the section. See note to § 139-3.

The 1973 amendatory act also directed that "Department of Natural and Economic Resources" should be substituted for "State Soil Conservation Committee" in line one of paragraph four of this section. Since the quoted words never appeared in line one of paragraph four, no attempt has been made to give effect to this part of the amendment.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the second paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 139-14. Dividing large districts. — Whenever the Soil and Water Conservation Commission shall receive a petition from any board of district supervisors signed by all supervisors of such district, the Commission shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in G.S. 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the Commission shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The Commission shall assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8; 1973, c. 1262, s. 38.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Committee" near the beginning of the section and substituted "Commission" for "State Committee" in three places. See note to § 139-3.

ARTICLE 2.

Watershed Improvement Districts.

§ 139-18. Notice and hearing on petition; determination of need for district and defining boundaries.

(j) If there be only one voting place the county election authorities shall immediately after the counting of the ballots form a board of canvassers and, in the presence of such voters as choose to attend, shall canvass and judicially determine the results.

If there be more than one voting place the county election authorities at each voting place shall elect one of their members to attend the meeting of the board of canvassers as a member thereof. When the results of the counting of the ballots shall have been ascertained, such results shall be embodied in a duplicate statement, one copy of which shall be placed in a sealed envelope and delivered to the official elected to attend the meeting of the board of canvassers, and the other copy of which shall be mailed by another county election official to the board of supervisors of the soil conservation district. The members of the board of canvassers so appointed shall meet at 11 A.M. on the second day after the election at the county courthouse of the county wherein the largest portion of the proposed district lies, as determined by the said board of supervisors. A majority of the board of canvassers shall constitute a quorum, and such board shall organize by the election of one of its number as chairman and one as secretary. Any member of such board who shall fail to deliver the certified returns from his voting place by 12 noon on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. If any returns have not been received by 12 noon on the day of the meeting, or if any returns are incomplete or defective, it may dispatch an officer to the residence of such officials for the purpose of securing the proper returns for such voting place. The board of canvassers at its meeting shall in the presence of such voters as choose to attend, open, canvass, and judicially determine the results.

Whether there be one or more than one voting place, the board of canvassers after judicially determining the results shall make abstracts stating the number of legal ballots cast in each voting place and the number of votes cast for and against creation of the watershed improvement district, and shall sign the same in duplicate with its certificate as to the correctness of the abstracts. It shall have power to pass upon judicially all the votes relative to the election and judicially determine and declare the results of the same; to send for papers and persons and examine the latter upon oath; and to pass upon the legality of any disputed ballots transmitted to it by any election official. The board of canvassers shall transmit one copy of the certified abstract of the results to the Soil and Water Conservation Commission, and shall file the other copy with the supervisors of the soil and water conservation district.

(m) After the completion of the referendum the supervisors shall enter a final order approving or disapproving the petition, and shall record such order in their official minutes. The supervisors shall by personal service or registered mail serve a copy of the final order upon every person who attended the hearings and signed a roster provided for that purpose, and shall publish notice of such order once a week for two successive weeks. Any order of approval shall declare

the district to be duly organized; shall specifically define the boundaries of the district, and shall be certified by the supervisors together with a certified copy of the petition for establishment of the district, to the Soil and Water Conservation Commission, the Environmental Management Commission and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket. The boundary definition contained in said order shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land, and said boundaries may be defined by any of the methods permitted in G.S. 139-17(3) for description of boundaries. If the final order makes no change in the area proposed to be organized in the petition, a reference to a map or description of said area contained in the petition shall be a sufficient boundary definition for purposes of the order. If a petition is disapproved, subsequent petitions covering the same or substantially the same territory may be filed after six months have elapsed from the date of the order of disapproval, and new proceedings held thereon.

(1973, c. 1262, s. 38.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" near the end of the last paragraph of subsection (j) and for "State Soil and Water Conservation Committee" near the middle of subsection (m) and substituted "Environmental Management Commission" for "State Board" near the middle of subsection (m). See note to § 139-3.

As the rest of the section was not changed by the amendment, only subsections (j) and (m) are set out.

§ 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments.

(d) If the owner of, or any person interested in, any land assessed or classified is dissatisfied with the amount of the assessment under this section or with the classification under G.S. 139-25, he may give written notice to the secretary-treasurer of the district within 10 days after confirmation of the assessment roll or after the last day of the classification hearing, respectively, that he takes an appeal to the Environmental Management Commission. Within 20 days after such confirmation or after the last day of the classification hearing, respectively, he must file with the Environmental Management Commission and the secretary-treasurer of the district a brief statement of the grounds for his dissatisfaction with the ruling of the trustees. The Environmental Management Commission shall set a date for a hearing not more than 90 days from the date of the filing of the statement. At said hearing, evidence shall be taken by the Environmental Management Commission from the district and the landowner, both of whom shall have the right to be represented by counsel. After hearing the evidence, the Environmental Management Commission may affirm, overrule or modify the ruling of the trustees and may tax the cost of the hearing against the losing party. Either party may appeal from the ruling of the Environmental Management Commission to the superior court of the county wherein the land is located for trial de novo. The appeal from the trustees or the Environmental Management Commission shall not delay or stop the operation of the district or any of its works of improvement. The Environmental Management Commission in order to fulfill the duties herein granted shall have the powers given it under G.S. 139-35(e). The Environmental Management Commission may delegate to one of its members or to a deputy the function of holding any or all hearings which it is required to hold under the provisions of this subsection.

(1973, c. 1262, s. 38.)

Editor's Note. —
The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "State Board" throughout subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds.

(e) All watershed assessments shall be collected by the county tax collector in the same manner as county taxes, except as otherwise herein provided, and such collections shall be enforced in the manner provided by G.S. 105-374 and 105-375; provided, however, that there shall be no right to proceed against personal property in enforcing such collections. The tax collector shall be required on the first day of each month to make settlements with the secretary-treasurer of the Watershed Improvement District of all collections of watershed assessments for the preceding month, and to deposit all moneys so collected in an account maintained in the name of the district at an official depository designated by the district. Such account shall also be used for the deposit of all other funds of the district. Expenditures from such account may be made with the approval of the trustees of the district on requisition from the chairman and the secretary-treasurer of the district. The fee allowed the tax collector for collecting the watershed assessments shall be two percent (2%) of the amount collected, except that, where the tax collector is on a salary basis, such fee shall be paid into the general fund of the county.

If the tax collector shall willfully fail or neglect to comply with any requirement of law concerning collection or deposit of watershed assessments, he shall be guilty of a misdemeanor, and upon conviction shall be subject to fine and imprisonment, in the discretion of the court. He shall likewise be liable to a civil action for all damages which may accrue either to the trustees of the district or the holders of its bonds, to either or both of whom a right of action is hereby given.

(1975, c. 283.)

Editor's Note. —
The 1975 amendment substituted "G.S. 105-374 and 105-375" for "G.S. 105-414 and subsections (f) through (v) of G.S. 105-391" preceding the proviso in the first sentence of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 139-28. Fiscal powers of governing body; may hold referendum on question of incurring indebtedness and issuing bonds. — The trustees of a watershed district shall have power, with or without a referendum, to incur indebtedness on behalf of the district to defray any part of the expenses and costs of the district, and may pledge to the repayment thereof funds to be derived from benefit assessments, grants, gifts, or other sources of revenue.

The indebtedness of the district may be evidenced by bonds, bond anticipation notes, benefit assessment anticipation notes or revenue anticipation notes. No debt shall be contracted for a term of more than 40 years.

The trustees, if they so elect, may request the board or boards of election of each county wherein any part of the district lies to call a referendum on the question of whether the district shall incur debt or issue bonds for one or more of the purposes for which it was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 7; 1977, c. 483.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "40 years" for "20 years" at the end of the second sentence of the second paragraph.

§ 139-35. Supervision by Environmental Management Commission. — (a) The Environmental Management Commission, to the extent herein provided, shall have supervisory responsibility over the programs provided for in this Article.

(b) Each watershed improvement district (to the extent that moneys are made available therefor by the State of North Carolina or any of its agencies or political subdivisions, by any municipality, or otherwise) shall:

(1) By means of suitable measuring and recording devices and facilities and at intervals prescribed by the Environmental Management Commission, record the inflow of water into and release of water from such reservoirs of the district as may be designated by the Environmental Management Commission; and

(2) Make periodic reports of such records as required by the Environmental Management Commission.

(c) The Environmental Management Commission shall be the State agency to which watershed work plans developed under Public Law 566 (83rd Congress, as amended) for contemplated works of improvement shall be submitted for review and approval or disapproval. All other work plans for contemplated works of improvement pursuant to this Chapter shall likewise be submitted to the Environmental Management Commission for review and for approval or disapproval. The Environmental Management Commission shall approve such work plans if, in its judgment, the work plans

(1) Provided for proper and safe construction of proposed works of improvement;

(2) Show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods;

(3) Determine whether a program of flood plain management in connection with such proposed works is in the public interest, and to withhold approval until satisfactory measures are incorporated; and

(4) Are otherwise in compliance with law.

No work of improvement may be constructed or established without the approval of work plans by the Environmental Management Commission pursuant to this subsection. The Environmental Management Commission may publish flood plain management criteria to be followed by those persons, district, or other agencies preparing such work plans. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Environmental Management Commission, may be enjoined. The Environmental Management Commission may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in any such action shall be as provided in Article 37, Chapter 1 of the General Statutes.

(d) In conjunction with any work plans submitted to the Environmental Management Commission under subsection (c) of this section, a watershed improvement district shall submit in such form as the Environmental Management Commission may prescribe a plan of its proposed method of operations for works of improvement covered by the work plans and for related structures. With the approval of the Environmental Management Commission, the district may amend its initial plan of operations from time to time. Environmental Management Commission approval of the initial plan of operations shall not be required.

(e) If the Environmental Management Commission has reason to believe that a watershed improvement district is not operating any work of improvement or related structure in accordance with its plan of operations as amended, the

Environmental Management Commission on its own motion or upon complaint may order a hearing to be held thereon upon not less than 30 days' written notification to the district and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Environmental Management Commission shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Environmental Management Commission determines from evidence of record that the district is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Environmental Management Commission may issue an order directing the district to comply therewith or to take other appropriate corrective action. Upon failure by a district to comply with any such order, the Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs, and the procedure in any such action shall be as provided in Article 37, Chapter 1, of the General Statutes.

(f) As used in this section the term "critical periods" means monthly periods, or other periods designated by the Environmental Management Commission when (in the area affected) below-average stream flows coincide with above-average utilization of water; provided, that where insufficient data are available to permit reliable determinations concerning these matters, the Environmental Management Commission may adopt as the "critical period" for any particular area the period June 15 — September 15. (1959, c. 781, s. 8; 1967, c. 1070, ss. 2, 3; 1973, c. 1262, s. 38.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "State Board" and for "Board" throughout the section.

§ 139-36. Dissolution of watershed improvement district. — A watershed improvement district, after all outstanding debts or obligations have been satisfied, if any, may be dissolved upon:

(1) Petition filed with the supervisors of the soil and water conservation district or districts wherein the watershed improvement district lies, setting forth the change of circumstances which causes such district to be no longer of any benefit, and signed by any 100 owners of land lying within the limits of the watershed improvement district, or a majority of such owners if their total number be less than 200;
(2) Public hearings held, as provided in G.S. 139-18; and
(3) An order of the supervisors of the soil and water conservation district or districts approving the action sought.

If the foregoing requirements are met, the supervisors shall declare the watershed improvement district to be dissolved. Such declaration of dissolution shall be recorded in their official minutes, and the same certified to the Soil and Water Conservation Commission, the Environmental Management Commission, and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket of such clerk. (1959, c. 781, s. 8; 1973, c. 1262, s. 38.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil Conservation Committee" and "Environmental Management Commission" for "State Board" in the second sentence of the last paragraph. See note to § 139-3.

§ 139-38. Power of eminent domain conferred on watershed improvement districts. — (a) A watershed improvement district shall have the power to acquire by condemnation any interest in land needed in carrying out the purposes of this act, except interests in land within the boundaries of any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility as defined in G.S. 62-3. This power may be exercised only after:

(1) The district makes application to the Soil and Water Conservation Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Soil and Water Conservation Commission finds that the land is sought to be acquired for a proper district purpose. The findings of the Soil and Water Conservation Commission shall be conclusive in the absence of fraud, notwithstanding any other provision of law.

(b) The Soil and Water Conservation Commission shall certify copies of its findings to the applicant district, the Environmental Management Commission and the clerk of superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings thereof.

(c) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, right of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant district, boundaries may be described by any of the following methods or any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(3) "Commission" means the Soil and Water Conservation Commission.

(e) Interests in land acquired pursuant to this section may be used in such manner and for such purposes as the trustees of the district deem best. If, in the opinion of the trustees, such lands should be sold, leased or rented, the trustees may do so, subject to the approval of the Soil and Water Conservation Commission.

(1973, c. 1262, s. 38.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "Committee" in subsections (a), (b) and (e), substituted "Environmental Management Commission" for "State Board" in subsection (b) and substituted "Commission" for "Committee" and "Soil and Water Conservation Commission" for "State Soil and Water Conservation Committee" in subdivision (3) of subsection (c). See note to § 139-3.

As subsections (d) and (f) were not changed by the amendment, they are not set out.

ARTICLE 3.

Watershed Improvement Programs; Expenditure by Counties.

§ 139-39. Alternative method of financing watershed improvement programs by special county tax.

Local Modification. — Camden, Pasquotank and Perquimans: 1973, c. 957, amending 1973, c. 387.

§ 139-40. Conduct of election.

Local Modification. — Camden, Pasquotank and Perquimans: 1973, c. 957, amending 1973, c. 387.

§ 139-41. Powers of county commissioners.

(e) Counties which carry out watershed improvement programs under this Article shall be subject to supervision by the Environmental Management Commission pursuant to G.S. 139-35 to the same extent as are watershed improvement districts, and, for this purpose the words "districts" and "watershed improvement districts," wherever they occur in such section, shall be read as referring to counties.

(1973, c. 1262, s. 38.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "State Board" in subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 139-46. Recreational and related aspects of watershed improvement programs. — (a) Local watershed sponsors may install and maintain recreational facilities and services in connection with watershed improvement works or projects, and may provide areas (including structures) for the conservation and replacement of fish and wildlife habitat. For any of these purposes said sponsors may appropriate and expend funds, may levy taxes and assessments, and may issue bonds and notes, to the same extent as in the case of other authorized watershed activities. Such recreational facilities and services may include but are not limited to any or all of the water-related recreational facilities provided for in subsection (b) of this section, and parking areas, ingress and egress roads, hiking or nature trails, picnic areas and campsites. No application for watershed planning under Public Law 566 (83rd Congress, United States), as amended, may be approved by the Soil and Water Conservation Commission until after receipt and consideration of recommendations from the appropriate fish and wildlife agency concerning replacement of fish and wildlife habitat in mitigation of anticipated damages: Provided that this requirement for consideration of fish and wildlife recommendations shall not apply if such recommendations are not received by the Soil and Water Conservation Commission within 30 days after the Soil and Water Conservation Commission requests such recommendations. Within the meaning of this provision the "appropriate fish and wildlife agency" means the North Carolina Wildlife Resources Commission as to matters within its jurisdiction, and the North Carolina Department of Natural Resources and Community Development as to matters within its jurisdiction, or both such agencies as to matters within their concurrent jurisdiction.

(1973, c. 1262, ss. 38, 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Soil and Water Conservation Commission" for "State Soil and Water Conservation Committee" and

for "State Committee" and substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subsection (a). See note to § 139-3.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsections (b) and (c) were not changed by the amendments, they are not set out.

§ 139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization. — (a) As used in this section:

(1) The term "channelization" means channel excavation but does not include channel clearing and snagging work. Determinations by the Environmental Management Commission that a project involves channelization shall be conclusive for purposes of this section.

(2) The term "channel excavation" means the construction or enlargement of a channel by the removal and disposal of material by excavation to facilitate runoff of floodwater or drainage of water.

(3) "Channel clearing and snagging" means the removal and disposal of trees, snags, drifts, boulders or other obstructions from the flow area of a natural or excavated channel.

(c) Following publication of the notice, the Environmental Management Commission (or its designee pursuant to G.S. 143-215.3(a)(4)) shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The hearing shall be held pursuant to the provisions of G.S. 143-215.4(d), except that notice of the hearing shall be given as required by subsection (b) of this section. The decision of the Environmental Management Commission shall be subject to judicial review pursuant to G.S. 143-215.5.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Environmental Management Commission for review and for approval or disapproval. Such review shall be prior to, and in addition to, the review of watershed work plans provided for by G.S. 139-35. The Environmental Management Commission shall approve such investigation or report, following the public hearing held pursuant to subsection (c) of this section, if, in its judgment, the investigation or report shows that any channelization features of the proposed project are necessary to the project and that no other feasible alternatives are available. No work of improvement may be constructed or established without the approval of the preliminary project investigation or recommended report by the Environmental Management Commission pursuant to this section. The construction or establishment of any such work of improvement without such approval, or without conforming to a preliminary project investigation or recommended report approved by the Environmental Management Commission, may be enjoined. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina Department of Human Resources and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. The Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in such action shall be as provided in Article 37, Chapter 1 of the General Statutes. (1971, c. 1138, s. 3; 1973, c. 476, s. 128; c. 1262, s. 23.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" and for "Board" in subsections (a), (c) and (d).

As subsection (b) was not changed by the amendment, it is not set out.

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 3.

North Carolina Art Society.

Sec.

140-13. Annual audit by State Auditor; report to General Assembly.

140-14. North Carolina Art Society as membership arm of the North Carolina Museum of Art; promotion of public appreciation of art; organization of art exhibits, etc.

ARTICLE 3.

North Carolina Art Society.

§ 140-13. Annual audit by State Auditor; report to General Assembly. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1961, c. 1152; 1977, c. 702, s. 1.)

Editor's Note. — The 1977 amendment deleted "State" preceding "Art Society, Incorporated."

§ 140-14. North Carolina Art Society as membership arm of the North Carolina Museum of Art; promotion of public appreciation of art; organization of art exhibits, etc. — The North Carolina Art Society, Incorporated, shall be the membership arm of the North Carolina Museum of Art, the means whereby citizens of North Carolina can support their museum through individual or corporate memberships in the Society and through participation in its diverse programs. It shall be the duty of the North Carolina Art Society to promote the public appreciation of art and its role in the development of civilization; to organize State and regional art exhibits, including works by contemporary North Carolina artists; and to do all other things deemed necessary to advance the objectives of the Society. (1961, c. 1152; 1977, c. 702, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section.

Chapter 141.
State Boundaries.

Sec.
141-7. [Repealed.]

§ 141-7: Repealed by Session Laws 1977, c. 342.

Chapter 142.

State Debt.

Article 1.

General Provisions.

Sec.
142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par.
142-13. Destruction of canceled bonds, notes and coupons.

ARTICLE 1.

General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par. — All bonds or certificates of debt of the State shall be signed by the Governor, and countersigned by the State Treasurer, and sealed with the great seal of the State, and shall be made payable to bearer unless registered as hereinafter provided. The principal shall be made payable by the State at a day named in the bonds or certificates. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable at such banks or trust companies within or without the State as shall be designated by the State Treasurer, or at the office of the State Treasurer in Raleigh. Any bank or trust company serving as a paying agent may be paid such reasonable fees and charges for such services as shall be agreed upon by and between such bank or trust company and the State Treasurer. No original bond or certificate of debt of the State shall be sold for a sum less than the par value thereof, nor shall any such bond or certificate, issued in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the State Treasury. (1848, c. 89, s. 22; 1852, c. 9; c. 10, s. 10; R. C., c. 90, s. 3; Code, s. 3563; Rev., s. 5020; C. S., s. 7401; Ex. Sess. 1921, c. 66, ss. 1, 2; 1977, c. 405.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 142-13. Destruction of canceled bonds, notes and coupons. — All canceled bonds, notes and interest coupons of the State may be destroyed in one of the following ways, in the discretion of the Treasurer:

(1) Method 1. The Treasurer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes and coupons, showing

a. With respect to bonds and notes, the designation, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.

b. With respect to coupons, the designation and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity and total amount of coupons.

After this entry has been made, the paid bonds, notes or coupons shall be destroyed, by either burning or shredding, in the presence of the Council of State. Each member of the Council of State in attendance shall certify under his hand in the book kept by the Treasurer that he saw the bonds, notes or coupons destroyed. Canceled bonds, notes or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. The Treasurer may contract with the bank or trust company acting as paying agent for a bond issue for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the Treasurer a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the Treasurer. Canceled bonds or coupons shall not be destroyed until one year from the date of payment.

The provisions of G.S. 121-5 and 132-3 shall not apply to any such paid bonds, notes or coupons. (1879, c. 98, s. 8; Code, s. 3578; Rev., s. 5035; C. S., s. 7415; 1941, c. 28; 1975, c. 527.)

Editor's Note. — The 1975 amendment rewrote this section.

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

Sec.
143-2. Purposes.
143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements.
143-31.1. Study and review of plans and specifications for building, improvement, etc., projects.
143-32. Person expending an appropriation wrongfully.
143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds.
143-34.3. [Repealed.]
143-34.5. Budget transfers.
143-34.6 to 143-34.9. [Reserved.]

Article 1.1.

Periodic Review of Certain State Agencies.

143-34.10. Findings and purposes.
143-34.11. Certain General Statutes provisions repealed effective July 1, 1979.
143-34.12. Certain General Statutes provisions repealed effective July 1, 1981.
143-34.13. Certain General Statutes provisions repealed effective July 1, 1983.
143-34.14. Winding-up period.
143-34.15. Governmental Evaluation Commission; creation; membership, compensation, etc.; termination.
143-34.16. Performance evaluation of programs scheduled for termination.
143-34.17. Evaluation elements.
143-34.18. Hearings by Governmental Evaluation Commission; final action by Commission.
143-34.19. Hearings and recommendations by legislative committees of reference.
143-34.20. Separate bills required for each agency.
143-34.21. Claims against agencies not to be terminated.

Article 3.

Purchases and Contracts.

143-48. Purpose and implementation.
143-49. Powers and duties of Secretary.
143-50. Certain contractual powers exercised by other departments transferred to Secretary.
Sec.
143-51. Reports to Secretary required of all agencies as to needs.
143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.
143-53. Rules and regulations.
143-55. Requisitioning for supplies by agencies; must purchase through sources certified.
143-56. Certain purchases excepted from provisions of Article.
143-57. Purchases of articles in certain emergencies.
143-58. Contracts contrary to provisions of Article made void.
143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies.
143-60. Rules and regulations covering certain purposes.
143-61. [Repealed.]
143-63. Financial interest of officers in sources of supply; acceptance of bribes.
143-63.1. Sale, disposal and destruction of firearms.

Article 3A.

State Agency for Surplus Property.

143-64.1. Department of Administration designated State agency for surplus property.
143-64.3. Power of Department of Administration and Secretary to delegate authority.
143-64.6 to 143-64.9. [Reserved.]

Article 3B.

Energy Policy for State Agencies Concerning Major Construction or Renovation of Buildings.

143-64.10. Findings of General Assembly.
143-64.11. Definitions.
143-64.12. Authority and duties of State agencies.
143-64.13. Responsibility of chief executives.
143-64.14. Application of Article.
143-64.15 to 143-64.19. [Reserved.]

Article 3C.

Contracts to Obtain Consultant Services.

143-64.20. "Agency" defined; Governor's approval required.

Sec.
143-64.21. Findings to be made by Governor.
143-64.22. Contracts with other State agencies; competitive proposals.
143-64.23. Compliance required; penalty for violation of Article.
143-64.24. Applicability of Article.

Article 7.

Inmates of State Institutions to Pay Costs.

143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.

Article 8.

Public Building Contracts.

143-128. Separate specifications for building contracts; responsible contractors.
143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.
143-129.1. Withdrawal of bid.
143-132. Minimum number of bids for public contracts.
143-134. Applicable to Department of Transportation and Department of Correction; exceptions.
143-135. Limitation of application of Article.
143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims.
143-135.4. Authority of Department of Administration not repealed.

Article 9.

Building Code Council and Building Code.

143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs.
143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance.

Article 9A.

Uniform Standards Code for Mobile Homes.

143-151.2. Prohibition of master meters for electric and natural gas service.
143-151.3 to 143-151.7. [Reserved.]

Article 9B.

North Carolina Code Officials Qualification Board.

143-151.8. Definitions.
143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies.
143-151.10. Compensation.
143-151.11. Chairman; vice-chairman; other officers; meetings; reports.
143-151.12. Powers.
143-151.13. Required standards and certificates for Code-enforcement officials.
143-151.14. Comity.
143-151.15. Return of certificate to Board; reissuance by Board.
143-151.16. Certification fees; renewal of certificates.
143-151.17. Grounds for disciplinary actions; investigation; administrative procedures.
143-151.18. Violations; penalty; injunction.
143-151.19. Administration.
143-151.20. Donations and appropriations.
143-151.21 to 143-151.25. [Reserved.]

Article 9C.

Enforcement of Building Code Insulation and Energy Utilization Standards.

143-151.26. Purpose and intent.
143-151.27. Designation of local inspectors.
143-151.28. Training course for inspectors.
143-151.29. Permits.
143-151.30. Contents of permit.
143-151.31. Persons entitled to permit.
143-151.32. Inspections by inspection department or energy and insulation inspector.
143-151.33. Inspection by architect or engineer.
143-151.34. Contract provisions.
143-151.35. License revocation.
143-151.36. Penalty.

Article 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

143-166. Law-Enforcement Officers' Benefit and Retirement Fund.

Article 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

143-166.1. Purpose.
143-166.2. Definitions.
143-166.3. Payments; determination.
143-166.7. Applicability of Article.

Article 13.

Publications.

143-169. Limitations on publications.
143-169.1. State agency public document mailing lists to be updated.

Article 14.

North Carolina Zoological Authority.

Sec.

143-171 to 143-176.1. [Repealed.]
143-177.1. North Carolina Zoological Park Fund.
143-177.3. Sources of funds.

Article 15.

Council of State Governments.

143-178 to 143-185. [Repealed.]

Article 18.

Rules and Regulations Filed with Secretary of State.

143-195 to 143-198.1. [Repealed.]

Article 19.

Roanoke Island Historical Association.

143-204. [Repealed.]

Article 19C.

Outdoor Historical Dramas.

143-204.8. Allotments to outdoor historical dramas.

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

143-211. Declaration of public policy.
143-212. [Repealed.]
143-213. Definitions.
143-214. [Repealed.]
143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission.
143-214.2. Prohibited discharges.
143-215. Effluent standards and limitations.
143-215.1. Control of sources of water pollution; permits required.
143-215.2. Special orders.
143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers.
143-215.4. General provisions as to procedure; seal; hearing officer.
143-215.5. Judicial review.
143-215.6. Enforcement procedures.
143-215.8A. Planning.
143-215.9. Restrictions on authority of the Environmental Management Commission.
143-215.10. [Repealed.]

Part 2. Regulation of Use of Water Resources.

Sec.

143-215.13. Declaration of capacity use areas.
143-215.14. Regulations within capacity use areas; scope and procedures.
143-215.15. Permits for water use within capacity use areas — procedures.
143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties.
143-215.17. Enforcement procedures.
143-215.18. Map or description of boundaries of capacity use areas.
143-215.19. Rights of investigation, entry, access and inspection.
143-215.20. Rules and regulations.
143-215.21. Definitions.

Part 3. Dam Safety Law.

143-215.24. Declaration of purpose.
143-215.25. Definitions.
143-215.26. Construction of dams.
143-215.28. Action by Environmental Management Commission upon applications.
143-215.29. Supervision by qualified engineers; reports and modification during work.
143-215.30. Notice of completion; certification of final approval.
143-215.31. Supervision over maintenance and operation of dams.
143-215.32. Inspection of dams.
143-215.33. Judicial review.
143-215.34. Investigations by Department; rules and regulations; employment of consultants.
143-215.35. Liability for damages.
143-215.36. Enforcement procedures.
143-215.37. Rights of investigation, entry, access, and inspection.

Part 4. Federal Water Resources Development Projects.

143-215.40. Resolutions and ordinances assuring local cooperation.
143-215.41. Items of cooperation to which localities and the State may bind themselves.
143-215.42. Acquisition of lands.

Part 5. Right of Withdrawal of Impounded Water.

143-215.48. Determining streamflows.
143-215.50. Interpretation with other statutes.

Part 6. Floodway Regulation.

143-215.56. Delineation of floodway; powers of Environmental Management

Sec.
Commission and Department of Natural Resources and Community Development; powers of local governments.

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

143-215.62. Revolving fund established; conditions and procedures.

Part 7. Water and Air Quality Reporting.

143-215.64. Purpose.
143-215.65. Reports required.
143-215.66. Monitoring required.
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143-215.69. Enforcement procedures.

Article 21A.
Oil Pollution Control.

Part 1. General Provisions.

143-215.77. Definitions.
143-215.78. Oil pollution control program.
143-215.79. Inspections and investigations; entry upon property.
143-215.81. Authority supplemental.

Part 2. Oil Discharge Controls.

143-215.83. Discharges.
143-215.84. Removal of prohibited discharges.
143-215.85. Required notice.
143-215.86. Other State agencies.
143-215.87. Oil Pollution Protection Fund.
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Part 3. Oil Terminal Facilities.

143-215.94. Joint and several liability.
143-215.97. Recommendations; regulations.
143-215.99. [Repealed.]

Part 4. Oil Refining Facility Permits.

143-215.100. Oil refining facility permits.
143-215.101. Powers of the Secretary.
143-215.102. Penalties.
143-215.103, 143-215.104. [Reserved.]

Article 21B.

Air Pollution Control.

143-215.106. Administration of air quality program.
143-215.107. Air quality standards and classifications.
143-215.108. Control of sources of air pollution; permits required.
143-215.109. Control of complex sources.
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143-215.110. Special orders.
143-215.111. General powers of Environmental Management Commission; auxiliary powers.
143-215.112. Local air pollution control programs.
143-215.113. General provisions as to procedure; appeals.
143-215.114. Enforcement procedures.

Article 22.

State Ports Authority.

143-216 to 143-228.1 [Recodified.]

Article 23.

Armories.

143-229. [Repealed.]
143-232 to 143-236.1. [Repealed.]

Article 24.

Wildlife Resources Commission.

143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.
143-241. Appointment and terms of office of Commission members; filling of vacancies.
143-242. Vacancies by death, resignation or otherwise.
143-243. Organization of the Commission; election of officers; Robert's Rules of Order.
143-245. [Repealed.]
143-247.2. Contributions for nongame wildlife.
143-252. Article subject to Chapter 113.
143-253. Jurisdictional questions.
143-254.2. Enforcement of local laws.

Article 25.

National Park, Parkway and Forests Development Commission.

143-255 to 143-257. [Repealed.]
143-259, 143-260. [Repealed.]

Article 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

143-267. Release and payment of funds to State Treasurer; delivery of other assets to Secretary of Administration.
143-268. Official records turned over to Department of Cultural Resources; conversion of other assets into cash; allocation of assets to State agency or department.
143-270. Statement of claims against board or agency; time limitation on presentation.

Sec.
143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina.

Article 29A.

Governor's Council on Employment of the Handicapped.

143-283.7. Funds, expenses and gifts; reports.

Article 29C.

Youth Councils Act.

143-283.24 to 143-283.30. [Repealed.]
143-283.32. [Repealed.]

Article 29D.

Manpower Council.

143-283.41 to 143-283.48. [Repealed.]

Article 30.

Nutbush Conservation Area.

143-284 to 143-286. [Repealed.]
143-286.1. Nutbush Conservation Area.
143-287, 143-288. [Repealed.]
143-289. Contributions from certain counties and municipalities authorized; other grants or donations.
143-290, 143-290.1. [Repealed.]

Article 31.

Tort Claims against State Departments and Agencies.

143-291. Industrial Commission constituted a court to hear and determine claims; damages.
143-295. Settlement of claims.
143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

Article 31A.

Defense of State Employees.

143-300.6. Payment of judgments; compromise and settlement of claims.

Article 33.

Judicial Review of Decisions of Certain Administrative Agencies.

143-306 to 143-316. [Repealed.]

Article 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

143-317, 143-318. [Repealed.]

Article 33B.

Meetings of Governmental Bodies.

Sec.
143-318.4. Exceptions.

Article 34.

Local Affairs.

143-319. [Repealed.]
143-320. Definitions.
143-321, 143-322. [Repealed.]
143-323. Functions of Department of Natural Resources and Community Development.
143-324. [Repealed.]
143-325. Functions of committees.
143-326. Transfer of functions, records, property, etc.
143-327. [Repealed.]

Article 36.

Department of Administration.

143-336. Definitions.
143-337 to 143-339. [Repealed.]
143-340. Powers and duties of Secretary.
143-341. Powers and duties of Department.
143-345.4. Moore and Nash squares and other public lots.
143-345.6. Land records management program.

Article 37A.

Marine Science Council.

143-347.1 to 143-347.5. [Repealed.]
143-347.6 to 143-347.9. [Reserved.]

Article 37B.

Marine Resources Center Administrative Board.

143-347.10. Administrative Board created.
143-347.11. Membership; terms; expenses.
143-347.12. Rules of procedure; meetings; cooperation of other agencies.
143-347.13. Duties and responsibilities.
143-347.14. Staff and financial support.

Article 38.

Water Resources.

143-350. Definitions.
143-354. Ordinary powers and duties of the Environmental Management Commission.
143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Natural Resources and Community Development and of the Secretary of said Department.
143-358. Cooperation of State officials and agencies.

Sec.

143-359. Biennial reports of Environmental Management Commission.

Article 39.

U.S.S. North Carolina Battleship Commission.

143-360 to 143-362. [Repealed.]
143-366 to 143-369. [Recodified.]

Article 40.

Advisory Commission for State Museum of Natural History.

143-370. Commission created; membership.

Article 41.

Science and Technology Research Center.

143-374 to 143-377. [Recodified.]

Article 42.

Board of Science and Technology.

143-378 to 143-383. [Repealed.]

Article 44.

North Carolina Traffic Safety Authority.

143-392. Authority created; members.

Article 49.

North Carolina Human Relations Commission.

143-416 to 143-422. [Repealed.]

Article 49A.

Equal Employment Practices.

143-422.1. Short title.
143-422.2. Legislative declaration.
143-422.3. Investigations; conciliations.

Article 50.

Commission on the Status of Women.

143-423 to 143-428. [Repealed.]

Article 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

143-437. Pesticide Board; functions.
143-439. Pesticide Advisory Committee; creation and functions.

Part 2. Regulation of the Use of Pesticides.

143-442. Registration.
143-443. Miscellaneous prohibited acts.

Part 3. Pesticide Dealers and Manufacturers.

143-449. Qualifications for pesticide dealer license; examinations.

Sec.

143-451. Denial, suspension and revocation of license.

Part 4. Pesticide Applicators and Consultants.

143-452. Licensing of pesticide applicators; fees.
143-453. Qualifications for pesticide applicator's license; examinations.
143-455. Pest control consultant license.
143-456. Denial, suspension and revocation of license.

Part 5. General Provisions.

143-460. Definitions.
143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.

Article 53.

North Carolina Drug Authority.

143-471 to 143-475. [Repealed.]

Article 54.

North Carolina Council on State Goals and Policy Act.

143-476 to 143-482. [Repealed.]

Article 56.

Emergency Medical Services Act of 1973.

143-508. Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission.
143-510. Emergency Medical Services Advisory Council.
143-514. Training programs; utilization of emergency services personnel.

Article 57.

Crime Study Commission.

143-527 to 143-531. [Reserved.]

Article 58.

Committee on Inaugural Ceremonies.

143-532. Definitions.
143-533. Creation, appointment of members; members ex officio.
143-534. Time of appointments; terms of office.
143-535. Vacancies.
143-536. Chairman; rules of procedure; quorum.
143-537. Meetings.
143-538. Powers and duties.
143-539. Offices; per diem and allowances of members; payments from appropriations.

ARTICLE 1.

Executive Budget Act.

§ 143-2. Purposes. — It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Department of Administration all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Department of Administration in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" twice in the second paragraph. See § 143-344(a).

§ 143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements. — When the Advisory Budget Commission makes its biennial inspection of the facilities of the State and receives requests from the State institutions in the preparation of the report of the Advisory Budget Commission, the Director of the Budget may secure the services of a qualified photographer to accompany the Advisory Budget Commission on such tour of inspection and to take such photographs as the members of the Advisory Budget Commission may deem advisable in order to assist the Advisory Budget Commission and the members of the General Assembly in obtaining a clear conception of the needs of the various institutions requesting permanent improvements. The Director of the Budget may furnish sufficient copies of such photographs to the General Assembly at the time it is considering requests for appropriations from such institutions to enable each member of the General Assembly to have ready access to such photographs.

For the purpose of securing the service provided in this section, the Director

of the Budget is authorized to obtain the services of any regular photographer in the employment of the State and if no such photographer is available the Director of the Budget may secure the services of a professional photographer and the expense of such service shall be borne from the regular funds of the Department of Administration, and if necessary, additional funds may be secured from the Contingency and Emergency Fund. (1953, c. 982; 1957, c. 269, ss. 1, 2.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

§ 143-16. Article governs all departmental, agency, etc., appropriations.

Art Museum Building Commission. — There is nothing in the Executive Budget Act or § 143B-58 which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of the Executive Budget Act. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-28. All State agencies under provisions of this Article.

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-30. Budget of State institutions.

Purpose of these statutory provisions is to guard against improvident, extravagant or unauthorized expenditure of State funds in the construction of a building by any commission or agency of the State. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31. Building and permanent improvement funds spent in accordance with budget.

Purpose of these statutory provisions is to guard against improvident, extravagant or unauthorized expenditure of State funds in the construction of a building by any commission or agency of the State. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects. — It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Department of Administration to be favorable to the letting of construction contracts. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "the Division of Property Control of" preceding "the Department of Administration" in the last sentence.

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31.2. Appropriation, allotment, and expenditure of funds for historic and archeological property.

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-32. Person expending an appropriation wrongfully. — (a) Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney General for the use the State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in G.S. 1-83, subdivision (2).

(b) Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, or other State agency as herein defined, who willfully acts to divert, use, or expend any funds appropriated for the use of said institution or agency, in a manner designed to circumvent the provisions of this section, including normal reversions of State funds, by failing to properly receive or deposit funds, or by the improper expenditure or transfer of funds for any purpose other than that for which the funds were appropriated and budgeted, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. All offenses against this section shall be held to have been committed in the County of Wake and shall be tried and disposed of in the General Court of Justice for Wake County. If such offender be not an officer elected by vote of the people, conviction of such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender. (1925, c. 230, s. 4; 1929, c. 100, s. 34; 1977, c. 930.)

Editor's Note. — The 1977 amendment designated the former provisions of this section as subsection (a) and added subsection (b). The editors have substituted "this section" for "this act" in the first sentence of subsection (b) of the section as set out above.

§ 143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds. — All State agencies, funds, or state-supported institutions shall submit to the Department of Administration, as of the original date thereof, copies of all applications and requests for nonstate funds, (including federal funds), to be used for any purpose to which this section is applicable. This section shall be applicable to all projects and programs which do or may impose upon the State of North Carolina any substantial financial obligation at the time of or subsequent to the acceptance of any funds received upon any such application or request. Every State agency, fund or state-supported institution seeking nonstate funds for any such project or program shall furnish to the Department of Administration and the Advisory Budget Commission with each such copy of application or request, a statement of the purposes for which any

such project or program is desired or advocated, the source and amount of funds to be granted or provided therefor, and a statement of the conditions, if any, upon which such funds are to be provided.

It shall be required of all State agencies, funds, or state-supported institutions, commissions or regional planning and development bodies to submit to the Department of Administration a statement of participation in any contract, agreement, plan or request for nonstate funds (including federal funds).

Any contract entered into by a State agency, department, or institution for a federal grant shall include a limiting clause which specifically states that continuation of the grant program by the State of North Carolina is subject to State funds being appropriated by the General Assembly for that program. (1965, c. 1181; 1969, c. 1210; 1977, c. 802, s. 15.25.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added the third paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 143-34.3: Repealed by Session Laws 1977, c. 802, s. 15.20.

§ 143-34.5. Budget transfers. — Every State department, institution, and agency shall provide to the chairman of the legislative commission on governmental operations a copy of every approved budget transfer which permits the expenditure of funds for a purpose for which the General Assembly made no appropriation. (1975, 2nd Sess., c. 983, s. 124.)

Editor's Note. — Session Laws 1975, 2nd Sess., c. 983, s. 152, makes this section effective July 1, 1976.

§§ 143-34.6 to 143-34.9: Reserved for future codification purposes.

ARTICLE 1.1.

Periodic Review of Certain State Agencies.

§ 143-34.10. Findings and purposes. — The General Assembly finds that State government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and reestablishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies. (1977, c. 712, s. 1.)

Editor's Note. — Session Laws 1977, c. 712, s. 16, makes the act effective July 1, 1977.

Session Laws 1977, c. 712, s. 13, contains a severability clause.

§ 143-34.11. Certain General Statutes provisions repealed effective July 1, 1979. — The following statutes are repealed effective July 1, 1979, (except for purposes of the winding-up period, as provided by section 5 of this act):

Chapter 83, entitled "Architects."

Chapter 89C, entitled "Engineering and Land Surveying."

Chapter 89A, entitled "Landscape Architects."

Chapter 87, Article I, entitled "General Contractors."

Chapter 87, Article 2, entitled "Plumbing and Heating Contractors."
Chapter 87, Article 3, entitled "Tile Contractors."
Chapter 87, Article 4, entitled "Electrical Contractors."
Chapter 87, Article 5, entitled "Refrigeration Contractors."
Chapter 87, Article 6, entitled "Water Well Contractors."
Chapter 84, Article 4, entitled "North Carolina State Bar."
Chapter 85C, entitled "Bail Bondsmen and Runners."
Chapter 90A, Article 1, entitled "Sanitarians."
Chapter 90A, Article 2, entitled "Water Treatment Facility Operators."
Chapter 90A, Article 3, entitled "Wastewater Treatment Plant Operators."
Chapter 93, entitled "Public Accountants."
Chapter 93A, entitled "Real Estate Brokers and Salesmen."
Chapter 66, Article 9A, entitled "Private Detectives."
Chapter 93C, entitled "Watchmakers."
Chapter 74, Article 6, entitled "Mining Registration."
Chapter 78A, Article 5, entitled "Registration of Dealers and Salesmen" (of securities).
Chapter 81A, Article 5, entitled "Public Weightmasters."
Chapter 95, Article 5, entitled "Regulation of Employment Agencies."
Chapter 95, Article 15, entitled "Passenger Tramways."
Chapter 143B, Article 2, Part 6, entitled "Public Librarian Certification Commission," G.S. 125-9, entitled "Librarian Certification" and G.S. 125-10, entitled "Temporary Certificates for Public Librarians."
Chapter 74, Article 7, entitled "The Mining Act of 1971."
Chapter 113A, Article 4, entitled "Sedimentation Pollution Control Act of 1973."
Chapter 143, Article 21, Part 3, entitled "Dam Safety."
Chapter 143B, Article 7, Part 6, entitled "North Carolina Mining Commission."
Chapter 143B, Article 7, Part 8, entitled "Sedimentation Control Commission."
Chapter 143B, Article 7, Part 9, entitled "Wastewater Treatment Plant Operators Certification Commission."
G.S. 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and Bar.
Chapter 76, Article 6, entitled "Morehead City Navigation and Pilotage Commission."
Chapter 71, Article 2, entitled "North Carolina Commission on Indian Affairs." (1977, c. 712, s. 2.)

§ 143-34.12. Certain General Statutes provisions repealed effective July 1, 1981. — The following statutes are repealed effective July 1, 1981, (except for purposes of the winding-up period, as provided by section 5 of this act):
Chapter 90, Article 1, entitled "Practice of Medicine."
Chapter 90, Article 2, entitled "Dentistry."
Chapter 90, Article 4, entitled "Pharmacy."
Chapter 90, Article 6, entitled "Optometry."
Chapter 90, Article 7, entitled "Osteopathy."
Chapter 90, Article 8, entitled "Chiropractic."
Chapter 90, Article 9, entitled "Nurse Practice Act."
Chapter 90, Article 10, entitled "Midwives," and Chapter 130, Article 18, entitled "Midwives."
Chapter 90, Article 11, entitled "Veterinarians."
Chapter 90, Article 12A, entitled "Podiatrists."
Chapter 90, Article 13A, entitled "Practice of Funeral Service."
Chapter 90, Article 16, entitled "Dental Hygiene Act."
Chapter 90, Article 17, entitled "Dispensing Opticians."

Chapter 90, Article 18, entitled "Physical Therapy."
Chapter 90, Article 18A, entitled "Practicing Psychologists."
Chapter 90, Article 20, entitled "Nursing Home Administration Act."
Chapter 86, entitled "Barbers."
Chapter 88, entitled "Cosmetic Art."
Chapter 108, Article 3, Part 2, entitled "Licensing of Private Institutions (maternity homes, homes for the aged and infirm, private child-care institutions)."
Chapter 110, Article 3, entitled "Control over Child-Caring Facilities," and Article 7, entitled "Day-Care Facilities."
Chapter 143B, Article 9, Part 4, entitled "Child Day-Care Licensing Commission."
Chapter 122, Article 2E, entitled "Licensing of Local Mental Health Facilities."
G.S. 122-72, entitled "Licensing and Control of Local Mental Institutions and Homes."
Chapter 130, Article 26, entitled "Regulation of Ambulance Services."
Chapter 131, Article 13A, entitled "Hospital Licensing Act."
Chapter 66, Article 9, entitled "Collection of Accounts."
Chapter 66, Article 9B, entitled "Motor Clubs and Associations."
Chapter 113A, Article 7, entitled "Coastal Area Management."
Chapter 143, Article 21, entitled "Water and Air Resources," (except Part 3).
Chapter 143, Article 21A, entitled "Oil Pollution Control."
Chapter 143, Article 21B, entitled "Air Pollution Control."
Chapter 143, Article 38, entitled "Water Resources."
Chapter 143B, Article 7, Part 4, entitled "Environmental Management Commission." (1977, c. 712, s. 3.)

§ 143-34.13. Certain General Statutes provisions repealed effective July 1, 1983. — The following statutes are repealed effective July 1, 1983, (except for purposes of the winding-up period, as provided by section 5 of this act):
Chapter 90, Article 22, entitled "Licensure Act for Speech and Language Pathologists and Audiologists."
Chapter 89B, entitled "Foresters."
Chapter 85B, entitled "Auctions and Auctioneers."
Chapter 74B, entitled "Private Protective Services Act."
Chapter 89D, entitled "Landscape Contractors."
Chapter 136, Article 2C, entitled "House Movers Licensing Board."
Chapter 93D, entitled "North Carolina State Hearing Aid Dealers and Fitters Board."
Chapter 104E, entitled "North Carolina Radiation Protection Act."
Chapter 106, Article 2, entitled "North Carolina Fertilizer Law of 1947."
Chapter 106, Article 4C, entitled "Structural Pest Control Act."
Chapter 106, Article 5A, entitled "Marketing of Farmers Stock Peanuts."
Chapter 106, Article 12, entitled "Food, Drugs and Cosmetics."
Chapter 106, Article 14, entitled "State Inspection of Slaughterhouses."
Chapter 106, Article 14A, entitled "Licensing and Regulation of Rendering Plants and Rendering Operations."
Chapter 106, Article 15A, entitled "Meat Grading Law."
Chapter 106, Article 17, entitled "Marketing and Branding Farm Products."
Chapter 106, Article 28A, entitled "Regulation of Milk Brought into North Carolina from other States," and Article 28B, entitled "Regulation of Production, Distribution, etc., of Milk and Cream."
Chapter 106, Article 29, entitled "Inspection, Grading, and Testing Milk and Dairy Products."
Chapter 106, Article 31, entitled "North Carolina Seed Law."

Chapter 106, Article 34, Part 10, entitled "Feeding Garbage to Swine."
Chapter 106, Article 35, entitled "Public Livestock Markets."
Chapter 106, Article 35B, entitled "Livestock Dealer Licensing Act."
Chapter 106, Article 44, entitled "Unfair Practices by Handlers of Fruits and Vegetables."
Chapter 106, Article 49, entitled "Poultry; Hatcheries; Chick Dealers."
Chapter 106, Article 51A, entitled "North Carolina Antifreeze Law of 1975."
Chapter 106, Article 53, entitled "Grain Dealers," and Article 54, entitled "Adulteration of Grains."
Chapter 113, Article 7, entitled "North Carolina Game Law of 1935."
Chapter 113, Article 17, entitled "Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department."
Chapter 143, Article 52, Part 3, entitled "Pesticide Dealers and Manufacturers."
Chapter 143, Article 52, Part 4, entitled "Pesticide Applicators and Consultants."
G.S. 58-15, entitled "Authority over all insurance companies; no exemptions from license."
G.S. 58-40, entitled "Agents and others must procure license."
Chapter 58, Article 4, entitled "Insurance Premium Financing." (1977, c. 712, s. 4.)

§ 143-34.14. Winding-up period. — Upon termination, each program or function shall continue in operational existence until July 1 of the next succeeding year as a winding-up period. During the winding-up period, termination shall not reduce or otherwise limit the powers or authority of the responsible agencies. Upon the expiration of the one-year period after termination, each such program or function shall cease operation entirely. (1977, c. 712, s. 5.)

§ 143-34.15. Governmental Evaluation Commission; creation; membership, compensation, etc.; termination. — (a) There is hereby created a temporary State commission, to be known as the Governmental Evaluation Commission, (hereinafter, "the Commission") which shall consist of 10 members, six to be appointed by the Governor, and two each to be appointed by the Lieutenant Governor and the Speaker of the House of Representatives. The Lieutenant Governor's appointees shall be members of the Senate, and the Speaker's appointees shall be members of the House of Representatives, but no other member of the General Assembly or officer or employee of the State or spouse of any such member, officer or employee may be a member of the Commission. Commission members shall designate a chairman from among them annually. The original appointments of nonlegislator members will expire on June 30, 1980. The terms of the nonlegislator members appointed thereafter shall be three years, commencing on July 1 of the year in which the predecessor's term expired. The initial legislator-members shall be appointed after July 1, 1977; they and their successors shall serve until the expiration of the legislative terms which they are serving at the time of their appointment to the Commission and until their successors are appointed or until they cease to be members of the General Assembly, whichever occurs first. Vacancies in the positions of legislator-members shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. Vacancies in the positions of the Governor's appointees shall be filled by the Governor for the unexpired term.

(b) Commission members who are not legislators shall receive as compensation for their services the same per diem and travel expense allowances as members of occupational licensing boards pursuant to G.S. 93B-5.

Legislator-members of the Commission shall be compensated pursuant to G.S. 120-3.1.

(c) The Commission shall utilize the expertise of the Attorney General and other appropriate agencies in performing its duties under this act.

(d) The Commission is authorized to employ such clerical, technical and professional staff, and to obtain such consulting services, as the Commission deems necessary, and to defray the expenses thereof from any funds made available to it through grants, appropriations or any other source. The number of staff persons to be employed, the salary to be paid to each, the fees to be paid to consultants, and the expenditure of funds for any purpose by the Commission shall be subject to the approval of the Legislative Services Commission.

(e) Except as herein provided, Commission members shall not be permanent salaried employees of the Commission.

(f) The Commission shall terminate and the authority granted by this act shall expire on June 30, 1983. (1977, c. 712, s. 6.)

§ 143-34.16. Performance evaluation of programs scheduled for termination. — (a) The Governmental Evaluation Commission shall cause to be conducted a performance evaluation of each program or function scheduled for termination under this Article. The agency responsible for each program or function under review shall provide the Commission with the following information:

(1) The identity of all agencies or subunits under the direct or advisory control of the agency whose program is under review;

(2) All powers, duties, and functions currently performed by the agency whose program is under review, or that are currently inactive;

(3) All constitutional, statutory, or other authority under which said powers, duties, and functions of the agency are carried out;

(4) Any powers, duties, or functions which, in the opinion of the agency under review, are being performed and duplicated to any extent by another agency within the State including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating such a situation;

(5) Any powers, duties, or functions which, in the opinion of the agency under review, are inconsistent with current and projected public demands and should be terminated or altered; and

(6) Any other information which the Commission in its discretion, feels is necessary and proper in carrying out its duties to review.

(b) In conducting the evaluations, the Commission shall take into consideration, but not be limited to considering, the factors listed in G.S. 143-34.17. Upon completion of the evaluation, the Commission shall submit a report to the General Assembly, including the Commission's recommendation as to whether the program or function in question should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes, and whether the responsible agency should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes. The Commission shall hold public hearings as provided in G.S. 143-34.18 for the purpose of reviewing its proposed report. A copy of the report shall be made available to each member of the General Assembly at least six months prior to the scheduled date of termination under G.S. 143-34.11 to 143-34.13.

(c) The Commission may review related programs or functions not scheduled for termination which, in the Commission's judgment, should be consolidated or better coordinated with programs scheduled for termination, and as a result of such review the Commission may recommend legislation providing for consolidation or coordination of related programs or for additional related programs to be scheduled for termination. (1977, c. 712, s. 7.)

§ 143-34.17. Evaluation elements. — The elements used by the Governmental Evaluation Commission in making its determination of the need for continuance of an agency program or function shall include, but not be limited to:

(1) An identification of the objectives intended for the agency program and the problem or need which the program was intended to address;
(2) An assessment of the degree to which the original objectives of the agency program have been achieved expressed in terms of performance, impact, or accomplishments of the program and of the problem or need which it was intended to address. Such assessment shall employ procedures or methods of analysis which the Commission determines to be appropriate to the type or character of the program;
(3) A statement of the performance and accomplishments of the agency program in the last fiscal year and of the budgetary costs incurred in the operation of the program;
(4) A statement of the number and types of persons served by the agency program;
(5) A summary statement, for the last completed fiscal year, of the number, by grade, and cost of personnel employed in carrying out the agency program and a summary statement of the cost of personnel employed under contract in carrying out the program;
(6) An assessment of the degree to which the overall policies of the agency program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the agency meet the objectives of the General Assembly in establishing the program;
(7) An assessment of the effect of the agency program on the State economy including costs to consumers and businesses;
(8) An evaluation of the reporting and record-keeping requirements and activities of the agency program, including the management and control of information and records and the value of the information gathered compared to the cost to respondents, and an assessment of methods to reduce and simplify the reporting and record-keeping requirements;
(9) A summary statement of the budget and program of the agency for the current fiscal year and budget projections for the next succeeding fiscal year if the program were to be continued;
(10) An assessment of whether the agency has permitted qualified applicants to serve the public, and whether the agency has encouraged participation by the public in making its rules and decisions, as opposed to participation solely by the persons it regulates;
(11) An evaluation of the extent to which operation has been efficient and responsive to public needs;
(12) An evaluation of the extent to which complaints have been expeditiously processed to completion in the public interest; and
(13) An analysis of the services and performance estimated to be achieved if the agency or agency program were continued. (1977, c. 712, s. 8.)

§ 143-34.18. Hearings by Governmental Evaluation Commission; final action by Commission. — (a) Before submitting a report to the General Assembly concerning the performance evaluation of any program or function, the Commission shall hold one or more public hearings concerning its proposed report. The Commission shall give notice of each such public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given at least 10 days before the public hearing and at least 20 days before the adoption or amendment of the report. The notice shall include:

(1) A reference to the statutory authority for the report (this act);
(2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted either at the hearing or at other times by any person;
(3) A statement of the terms or substance of the proposed report or a description of the subjects and issues involved.

(b) The Commission shall transmit copies of the notice to the Attorney General and all persons and agencies who have requested the Commission in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) Any such notice shall be published at least once in one newspaper of general circulation in Wake County. The Commission shall also deliver a copy of the notice to the agency or agencies responsible for the program or function that is the subject of the performance evaluation.

(d) The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to the proposed report any time within 10 days following the conclusion of any public hearing or within such additional time as it may allow by notice given as prescribed in this section.

(e) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed report pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General, with the members of the General Assembly and with the agency or agencies responsible for the program or function that is the subject of the report.

(f) The procedure set forth in this section shall be a complete procedure for the report, hearings, notices, and filing requirements that are the subject of this section. The Commission and its proceedings shall be exempt from the requirements of the Administrative Procedure Act (Chapter 150A), and any other requirements of law concerning the subjects of this section including without limitation any statutory requirements concerning filing of notices or reports with the Secretary of State or the Attorney General.

(g) The Commission is authorized to meet or to hold hearings in the State Legislative Building when the General Assembly is not in session, subject to the determination by the Legislative Services Commission that space is available. (1977, c. 712, s. 9.)

§ 143-34.19. Hearings and recommendations by legislative committees of reference. — (a) Prior to the termination, continuation, or reestablishment of any such program or function a committee of reference in each house of the General Assembly shall hold a public hearing, receiving testimony from the public and the agency involved, and in such a hearing the agency shall have the burden of demonstrating a public need for the continued existence of the program or function. The "committees of reference" shall be the Senate and House Committees on State Government, respectively, or such other committees as the respective presiding officers may determine. The committees of reference may hold joint public hearings and may meet jointly to formulate their recommendations.

(b) In developing their legislative recommendations, the committees of reference shall consider the evaluation elements listed in G.S. 143-34.17; shall proceed with a view to continuing productive, efficient and active programs which are in the public interest, to eliminating inactive programs, and to eliminating or consolidating overlapping or duplicating programs; and shall consider the extent to which changes are needed in enabling laws. (1977, c. 712, s. 10.)

§ 143-34.20. Separate bills required for each agency. — No more than one agency, board, council, committee, commission, or association shall be continued or reestablished in any bill recommended under this act, and such agency, board, council, commission, or association shall be mentioned in the bill's title. (1977, c. 712, s. 11.)

§ 143-34.21. Claims against agencies not to be terminated. — This act shall not cause the dismissal of any claim or right of a citizen against any such agency or any claim or right of agency terminated pursuant to this section which is subject to litigation. (1977, c. 712, s. 12.)

ARTICLE 3.

Purchases and Contracts.

§ 143-48. Purpose and implementation. — The purpose of this Article is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "the Purchase and Contract Division of" preceding "the Department of Administration" at the end of the section.

Session Laws 1975, 2nd Sess., c. 983, s. 122, provides: "Each State department, institution, or agency shall make every reasonable effort to assure that purchase orders will be limited to goods necessary to operate in the fiscal year in which the appropriation for such purchase is authorized. Each State department, institution, or agency shall furnish the State Auditor and Department of Administration, by July 31 of each year, a statement of all obligations outstanding at the end of the previous fiscal year."

§ 143-49. Powers and duties of Secretary. — The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the

rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. All receipts from the transfer or sale of such surplus, obsolete or unused equipment of State departments, institutions and agencies which are supported by appropriations from the general fund, except where such receipts have been anticipated for, or budgeted against the cost of replacements, shall be placed by the Secretary in an equipment reserve fund from which expenditures may be made only with prior approval of the Director of the Budget and the Advisory Budget Commission. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(1975, c. 580; c. 879, s. 46; 1977, c. 733.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, added the second sentence of subdivision (4).

The second 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in the introductory language and in the second sentence of subdivision (4).

The 1977 amendment, effective July 1, 1977, added the second paragraph of subdivision (3).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3) and (4) are set out.

§ 143-50. Certain contractual powers exercised by other departments transferred to Secretary. — All rights, powers, duties and authority relating to State printing, or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any State department, institution or agency under the several statutes relating thereto, are hereby transferred to the Secretary of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Secretary of Administration under the provisions of this Article. (1931, c. 261, s. 3; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in two places.

§ 143-51. Reports to Secretary required of all agencies as to needs. — It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in two places.

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts. — As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials and equipment needed and required by State departments, institutions and agencies to determine the total requirements for any given commodity. Where such total requirements will involve an expenditure in excess of two thousand five hundred dollars ($2,500) and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" throughout the section.

§ 143-53. Rules and regulations. — The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "Designating personnel and" at the beginning of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified. — After sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" throughout the section.

§ 143-56. Certain purchases excepted from provisions of Article. — Except as may otherwise be ordered by the Secretary of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Secretary of Administration shall not be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" throughout the section.

§ 143-57. Purchases of articles in certain emergencies. — In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. (1931, c. 261, s. 8; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the middle of the first sentence.

§ 143-58. Contracts contrary to provisions of Article made void. — If any department, institution or agency of the State government, required by this Article and the rules and regulations adopted pursuant thereto applying to the purchase or lease of supplies, materials, equipment, printing or services through the Secretary of Administration, or any nonstate institution, agency or instrumentality duly authorized or required to make purchases through the Department of Administration, shall contract for the purchase or lease of such supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such State or nonstate department, institution, agency or instrumentality purchases any supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules and regulations made hereunder, the executive officer of such department, institution, agency or instrumentality shall be personally liable for the costs thereof. (1931, c. 261, s. 9; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1977, c. 148, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the middle of the first sentence.

The 1977 amendment substituted "equipment, printing or services" for "or equipment" in two places.

§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies. — The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the beginning of the section.

§ 143-60. Rules and regulations covering certain purposes. — The Secretary of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and provisions of this Article.

Further, the Secretary of Administration, with the approval of the Advisory Budget Commission, may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in two places.

§ 143-61: Repealed by Session Laws 1975, c. 879, s. 45, effective July 1, 1975.

Cross Reference. — For present provisions as to the Standardization Committee, see § 143B-398.

§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes. — Neither the Secretary of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Secretary, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in three places.

§ 143-63.1. Sale, disposal and destruction of firearms.

(b) It shall be lawful for the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Department of Administration. (1973, c. 666, ss. 1-3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "Purchase and Contract Division of the" preceding "Department of Administration" in subsections (b) and (c).

As subsection (a) was not changed by the amendment, it is not set out.

ARTICLE 3A.

State Agency for Surplus Property.

§ 143-64.1. Department of Administration designated State agency for surplus property. — The Department of Administration is hereby designated as the State agency for surplus property, and with respect to the acquisition of surplus property said agency shall be subject to the supervision and direction of the Secretary of Administration who is authorized to prescribe the duties which shall be assigned to the personnel of said Department for surplus property purposes. (1953, c. 1262, s. 1; 1957, c. 269, s. 3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the middle of the section.

§ 143-64.3. Power of Department of Administration and Secretary to delegate authority. — The Department of Administration and/or the Secretary of Administration may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this Article. The Department of Administration and/or the Secretary of Administration may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this Article. (1953, c. 1262, s. 3; 1957, c. 269, s. 3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of said Department" in two places.

§§ 143-64.6 to 143-64.9: Reserved for future codification purposes.

ARTICLE 3B.

Energy Policy for State Agencies Concerning Major Construction or Renovation of Buildings.

§ 143-64.10. Findings of General Assembly. — (a) The General Assembly hereby finds:

(1) That state-owned and assisted facilities have a significant impact on the State's consumption of energy;
(2) That energy conservation practices adopted for the design, construction, and utilization of these facilities will have a beneficial effect on the State's overall supply of energy;
(3) That the cost of the energy consumed by these facilities over the life of the facilities must be considered, in addition to the initial cost of constructing such facilities; and
(4) That the cost of energy is significant and facility designs must take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy consumed, and of operation and maintenance of the facility as it affects energy consumption.

(b) The General Assembly declares that it is the policy of the State of North Carolina to insure that energy conservation practices are employed in the design of state-owned and assisted facilities. To this end the General Assembly encourages State agencies to analyze the cost of energy consumption of each facility constructed or each major facility constructed or renovated, over its economic life, in addition to the initial construction or renovation cost. (1975, c. 434, s. 1.)

Editor's Note. — Session Laws 1975, c. 434, s. 6, makes the act effective July 1, 1975.

§ 143-64.11. Definitions. — For purposes of this Article:
(1) The term "economic life" means the projected or anticipated useful life of a facility.
(2) The term "energy-consumption analysis" means the evaluation of all energy-consuming systems and components by demand and type of energy, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions.
(3) The term "facility" means any building or facility on which construction is initiated six months or more after July 1, 1975.
(4) The term "initial cost" means the required cost necessary to construct a facility or construct or renovate a major facility.
(5) The term "life-cycle cost" means the cost of a facility including its initial cost, and the cost, over the economic life of the facility, of the energy consumed and of operation and maintenance of the facility as it affects energy consumption.
(6) The term "major facility" means any building or facility of 40,000 or more gross square feet on which construction or renovation is initiated six months or more after July 1, 1975, and wherein significant energy demands will exist.
(7) The term "State agency" means the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, or any board or governing body of a political subdivision of the State, or an agency, commission, or authority of a political subdivision of the State.
(8) The term "state-assisted facility" or "major state-assisted facility" means a facility constructed, or major facility constructed or renovated, in whole or in part with State funds or with funds guaranteed or insured by a State agency.

(9) The term "State facility" or "major State facility" means a facility constructed, or a major facility constructed or renovated, by a State agency. (1975, c. 434, s. 2.)

§ 143-64.12. Authority and duties of State agencies. — (a) The General Assembly authorizes and directs that State agencies shall carry out the construction of State facilities, and the construction and renovation of major State facilities, under their jurisdiction or programs for the construction of state-assisted facilities and the construction and renovation of major state-assisted facilities in such a manner as to further the policy declared herein, insuring that life-cycle cost analyses and energy-conservation practices are employed in new state-owned and assisted facilities and in new or renovated major state-owned and assisted facilities.

(b) Each State agency having jurisdiction over any state-owned or assisted facilities' construction program shall evaluate each project, and if consistent with good architectural, engineering, and economic practice, require life-cycle cost analysis. Nothing in this Article shall deprive or limit any State agency which has review authority over design or construction plans from requiring a life-cycle cost analysis.

(c) This life-cycle cost analysis shall include but not be limited to such elements as:

(1) The coordination, orientation and positioning of the facility on its physical site;
(2) The amount and type of fenestration employed in the facility;
(3) Thermal characteristics of materials, and the amount of insulation incorporated into the facility design;
(4) The variable occupancy and operating conditions of the facility, including illumination levels;
(5) Architectural features which affect energy consumption; and
(6) An energy-consumption analysis of the major facility's heating, ventilating, and air-conditioning system, lighting system, and all other energy-consuming systems. The energy-consumption analysis of the operation of energy-consuming systems in the major facility should include but not be limited to:
    a. The comparison of two or more system alternatives;
    b. The simulation or engineering evaluation of each system over the entire range of operation of the major facility for a year's operating period; and
    c. The engineering evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

(d) The life-cycle cost analysis performed for each major facility shall provide but not be limited to the following information:

(1) The initial estimated cost of each energy-consuming system being compared and evaluated;
(2) The estimated annual operating cost of all utility requirements;
(3) The estimated annual cost of maintaining each energy-consuming system; and
(4) The average estimated replacement cost for each system expressed in annual terms for the economic life of the major facility.

(e) The life-cycle cost analysis shall be certified by a registered architect or registered professional engineer, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and in conformance with the provisions of G.S. 133-1.1.

(f) Provided, however, that in order to protect the integrity of historic buildings, no provision of this Chapter shall be interpreted to require such analysis with respect to any property eligible for, nominated to, or entered on

the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the North Carolina General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any state-owned or state-assisted historic property.

(g) Selection of the optimum system or combination of systems to be incorporated into the design of the major facility shall be based on the life-cycle cost analysis over the economic life of the facility. (1975, c. 434, s. 3.)

§ 143-64.13. Responsibility of chief executives. — The chief executives of all State agencies, as defined in this Article, shall be responsible for dissemination and effective performance of the policy established herein. (1975, c. 434, s. 4.)

§ 143-64.14. Application of Article. — The provisions of this Article shall not apply to municipalities or counties, nor to any agency or department of any municipality or county. (1975, c. 434, s. 5.)

§§ 143-64.15 to 143-64.19: Reserved for future codification purposes.

ARTICLE 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required. — (a) For purposes of this Article the term "agency" shall mean every State agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government.

(b) No State agency shall contract to obtain services of a consultant or advisory nature unless the proposed contract has been justified to and approved in writing by the Governor of North Carolina. All written approvals shall be maintained on file as part of the agency's records for not less than five years. (1975, c. 887, s. 1.)

Editor's Note. — Session Laws 1975, c. 887, s. 7, makes the act effective July 1, 1975.

Applicability of Provisions of Article to Contracts for Planning, Design and Construction of Highways. — The provisions of Chapter 887 applicable to "contracts for services of a consultant or advisory nature" do not include contracts for the planning, design and construction of highways which the Board of Transportation is authorized to enter into by the provisions of Chapter 136 of the General Statutes. Opinion of Attorney General to Mr. Billy Rose, 45 N.C.A.G. 71 (1975).

§ 143-64.21. Findings to be made by Governor. — The Governor, before granting written approval of any such contract, must find:

(1) That the contract is reasonably necessary to the proper function of such State agency; and

(2) That such services or advice cannot be performed within the resources of such State agency;

(3) That the estimated cost is reasonable as compared with the likely benefits or results; and

(4) That the General Assembly has appropriated funds for such contract or that such funds are otherwise available; and

(5) That all rules and regulations of the Department of Administration have been or will be complied with. (1975, c. 879, s. 46; c. 887, s. 2.)

Editor's Note. — Pursuant to Session Laws 1975, c. 879, s. 46, "Department of Administration" has been substituted for "Division of Purchase and Contract" near the end of this section as enacted by Session Laws 1975, c. 887, s. 2.

§ 143-64.22. Contracts with other State agencies; competitive proposals. — The rules and regulations of the Department of Administration shall include provisions to assure that all consultant contracts let by State agencies shall be made with other agencies of the State of North Carolina, if such contract can reasonably be performed by them; or otherwise, that wherever practicable a sufficient number of sources for the performance of such contract are solicited for competitive proposals and that such proposals are properly evaluated for award to the State's best advantage. (1975, c. 879, s. 46; c. 887, s. 3.)

Editor's Note. — Pursuant to Session Laws 1975, c. 879, s. 46, "Department of Administration" has been substituted for "Division of Purchase and Contract" near the beginning of the section, as enacted by Session Laws 1975, c. 887, s. 3.

§ 143-64.23. Compliance required; penalty for violation of Article. — No disbursement of State funds shall be made and no such contract shall be binding until the provisions of G.S. 143-64.21 and 143-64.22 have been complied with. Any employee or official of the State of North Carolina who violates this Article shall be liable to repay any amount expended in violation of this Article, plus court costs. (1975, c. 887, s. 4.)

§ 143-64.24. Applicability of Article. — This Article shall not apply to the General Assembly, special study commissions, the Research Triangle Institute, or the Institute of Government, nor shall it apply to attorneys employed by the North Carolina Department of Justice, or physicians or doctors performing contractual services for any State agency. (1975, c. 887, s. 5; 1977, c. 802, s. 50.57.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "the Research Triangle Institute" near the beginning of the section.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included.

This Article Is Constitutional. — See State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

This section applies to any person confined to a State institution (as defined in this section), regardless of the origin of the commitment. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

This Article is applicable to the criminally insane as well as to the civilly committed. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Policy. — The policy stated by the General Assembly is that all persons admitted to State hospitals must pay the actual cost of their care, treatment and maintenance. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Adequate Standards and No Impermissible Delegation of Power. — This Article sets forth adequate standards from which the various boards of trustees or directors of the institutions can ascertain the charges against a patient and is not an impermissible delegation of power to the hospital board. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

The cost charged by this Article is not characteristic of a tax at all. It is compensation for services rendered the respective inmates or patients by the hospital. State ex rel. Dorothea

Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs for Period from Declaration of Incompetency to Stand Trial and Trial. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs Arising During Period Following Acquittal by Reason of Insanity. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs During Period from Acquittal by Reason of Insanity and Release from Institution. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-118. Governing board to fix cost and charges.

Policy. — The policy stated by the General Assembly is that all persons admitted to State hospitals must pay the actual cost of their care, treatment and maintenance. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

This section sets forth the guidelines to be followed by the board and empowers it to fix the actual cost of maintaining an individual in a State institution. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-118.1. Governing board may compromise account.

Determination as to Ability to Pay. — This section and § 143-120 empower the board to make a factual determination of whether a patient (or such other persons as may be legally responsible for the patient) is financially able to pay. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-119. Payments.

Equitable Enforcement Options. — It is clear from a complete reading of this section that dismissal from an institution for failure to pay is only one of the options created by the statute to enforce payment as equitably as possible. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-120. Determining who is able to pay.

Determination as to Ability to Pay. — Section 143-118.1 and this section empower the board to make a factual determination of whether a patient (or such other persons as may be legally responsible for the patient) is financially able to pay. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-121. Action to recover costs.

Applied in State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-126. Death of inmate; lien on state.

Lien Created by This Section Does Not Have Priority Over Costs of Administration but Falls within the Fourth Class of § 28-105. — See opinion of Attorney General to Mr. Frankie Williams, Clerk of the Superior Court, Rockingham County, 43 N.C.A.G. 304 (1974).

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Human Resources for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status of a long-term patient. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48.)

Editor's Note. —

The 1975 amendment corrected an error in the second 1973 amendatory act by substituting "of" for "on" following "status" near the end of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

ARTICLE 8.

Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors. — Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed fifty thousand dollars ($50,000) must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration), and all work kindred thereto.
(2) Plumbing and gas fittings and accessories, and all work kindred thereto.
(3) Electrical wiring and installations, and all work kindred thereto.
(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications and awarding additional separate contracts for any other category of work when it is deemed in the best interest of such officer, board, department, commission or commissions to do so.

All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof, shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch is less than five thousand dollars ($5,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms

of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

All public authorities coming within the requirements of this section shall have the authority to purchase and erect prefabricated or relocatable buildings or portions thereof without complying with the provisions hereof, except that portion of the work which must be performed at the construction site. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620.)

Editor's Note. —

The 1973 amendment added the last paragraph.

The 1977 amendment, effective July 1, 1977, rewrote the first, second and third paragraphs, inserted "or repair" near the end of the second sentence of the fourth paragraph, and made minor changes in wording in the last paragraph.

Applicability of Section to Municipal Housing Authority. — Although housing authority was a municipal corporation organized for a special purpose, it was not a "municipality" subject to the provisions of this section requiring separate bids on different branches of work to be performed on contracts it let for construction of housing. Carolinas Chapter NECA, Inc. v. Housing Auth., 29 N.C. App. 755, 225 S.E.2d 653 (1976).

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc. — No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ten thousand dollars ($10,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of

this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts

involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, any may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2.)

Local Modification. — Bladen County Board of Education: 1973, c. 891; Guilford: 1977, c. 277; Mecklenburg: 1973, c. 1158, repealing 1969, c. 279; city of Charlotte: 1973, c. 1158, repealing 1967, c. 92; city of Winston-Salem: 1967, c. 805; 1973, c. 1185.

By virtue of Session Laws 1973, c. 989, and Session Laws 1975, c. 671, Durham should be stricken from the Replacement Volume.

Editor's Note. —

The 1973 amendment, effective Sept. 1, 1974, rewrote the tenth paragraph. As to the construction of the amendment, see Editor's note to § 44A-25.

The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Department of Administration" near the beginning of the last paragraph.

The 1977 amendment added the second sentence of the first paragraph and deleted "and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bond" at the end of the second sentence of the seventh paragraph.

§ 143-129.1. Withdrawal of bid. — A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S. 143-129 for construction or repair work to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original

work papers, documents or materials used in the preparation of the bid sought to be withdrawan. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event the work is relet for bids, under no circumstances shall the bidder who has filed a request to withdraw be permitted to rebid the work.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel, may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the

withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a misdemeanor. (1977, c. 617, s. 1.)

Editor's Note. — Session Laws 1977, c. 617, s. 2, provides: "This act shall become effective July 1, 1977, and shall apply only to construction or repair work advertised or readvertised for bids pursuant to G.S. 143-129 after said date."

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

Local Modification. Guilford: 1977, c. 277. By virtue of Session Laws 1973, c. 989, and Session Laws 1975, c. 671, Durham should be stricken from the Replacement Volume.

§ 143-132. Minimum number of bids for public contracts. — No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

Provided, however, that any contract for construction or repairs requiring the estimated expenditure of public money in an amount in excess of ten thousand dollars ($10,000) but not in excess of thirty thousand dollars ($30,000) may be awarded by any board or governing body of the State or any subdivision thereof upon receipt of at least two such competitive bids without readvertising if such board or governing body finds as a fact that it would not be in the public interest to readvertise as above required and makes appropriate written entry in the minutes or records of such board or governing body. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added the second paragraph.

§ 143-134. Applicable to Department of Transportation and Department of Correction; exceptions. — This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in three places.

§ 143-135. Limitation of application of Article. — Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials, or equipment, this Article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of fifty thousand dollars ($50,000), if the repairs, completed project, building, or structure are performed or accomplished by or through duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned; provided, that such force account work shall be subject to the approval of the Secretary of Administration in the case of State agencies, or approval of the responsible commission, council or board in the case of subdivisions of the State. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, added "Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials, or equipment" at the beginning of the section and substituted "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" near the middle of the section.

The second 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Department of Administration" near the end of the section.

§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims. — Upon completion of any contract for construction or repair work awarded by any State board to any contractor, under the provisions of this Article, should the contractor fail to receive such settlement as he claims to be entitled to under terms of his contract, he may, within 60 days from the time of receiving written notice as to the disposition to be made of his claim, submit to the Secretary of Administration a written and verified claim for such amount as he deems himself entitled to under the terms of said contract, setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Secretary of Administration and present any additional facts and arguments in support of his claim. Within 90 days from the receipt of the said written claim, the Secretary of Administration shall make an investigation of the claim and may allow all or any part or may deny said claim and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

As to such portion of the claim which may be denied by the Secretary of Administration, the contractor may, within six months from receipt of the decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

All issues of law and fact and every other issue shall be tried by the judge, without jury; provided that the matter may be referred in the instances and in the manner provided for in Article 20 of Chapter 1 of the General Statutes.

The submission of the claim to the Secretary of Administration within the time set out in this section and the filing of an action in the superior court within the time set out in this section shall be a condition precedent to bringing an action under this section and shall not be a statute of limitations.

The provisions of this section shall be deemed to enter into and form a part of every contract entered into between any board of the State and any

contractor, and no provision in said contracts shall be valid that is in conflict herewith.

The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. "A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts.

"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46.)

Editor's Note. — The 1973 amendment added the last paragraph.

The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Department of Administration" throughout the section.

Chapter 1, Article 20, referred to in this section, was repealed by Session Laws 1967, c. 954, s. 4. See now Rule 53 of the Rules of Civil Procedure (§ 1A-1).

For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Stated in Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth., 284 N.C. 732, 202 S.E.2d 473 (1974); Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

§ 143-135.4. Authority of Department of Administration not repealed. — Nothing contained in this Article shall be construed as contravening or repealing any authorities given by statute to the Department of Administration. (1967, c. 860; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "Purchase and Contract Division of the" preceding "Department of Administration" at the end of the section.

ARTICLE 9.

Building Code Council and Building Code.

§ 143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs.

(d) Fiscal Affairs of the Council. — All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council. (1957, c. 269, s. 1; c. 1138.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the second sentence of subsection (d). See § 143-344(a).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 143-138. North Carolina State Building Code.

Legislative Intent. — There is a legislative intent to provide a complete and integrated regulatory scheme, including regulations as to the installation of sprinkler systems, in all buildings and structures, wherever situate in North Carolina, except as expressly exempted by statute. Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

National Electrical Code as Statutory, etc. — See Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

National Electrical Code Has Force, etc. — The National Electrical Code has the force and effect of law and criminal sanctions are provided for its violation. Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

And Violation Thereof, etc. —

In accord with 1st paragraph in original. See Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

City Ordinance Requiring Sprinkler Systems. — An interpretation of § 160A-174 to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its Fire Prevention Code and thereby to evade the clear requirements of subsection (e). Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

§ 143-139. Enforcement of Building Code.

Legislative Intent. — The legislative intention to create a complete and integrated regulatory scheme is evidenced by the language of subsection (b), which delegates to the Commissioner of Insurance the responsibility of administering and enforcing the provisions of the North Carolina Building Code. Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

§ 143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance. — (a) In addition to other enforcement provisions set forth in this Chapter, no single family or multi-unit residential building on which construction is begun in North Carolina on or after January 1, 1978, shall be occupied until it has been certified as being in compliance with the minimum insulation standards for residential construction, as prescribed in the North Carolina State Building Code or as approved by the Building Code Council as provided in G.S. 143-138(e). It shall be the duty of each county government and each municipality to provide for a building inspection program for certification of compliance with this section, either through a person in the county, city or joint inspection department who is responsible for enforcement of the insulation and energy utilization standards of the State Building Code or in any county or city which does not have an inspection department, through a person designated as the energy and insulation inspector.

(b) No public supplier of electric service, including regulated public utilities, municipal electric service and electric membership corporations, shall connect for electric service to an occupant any residential building on which construction is begun on or after January 1, 1978, unless said building complies with the insulation requirements of the North Carolina State Building Code or of local building codes approved by the Building Codes Council as provided in G.S. 143-138(e), and has been certified for occupancy in compliance with the minimum insulation standards of the North Carolina State Building Code or of any local modification approved as provided in G.S. 143-138(e), by a person designated as an inspector pursuant to subsection (a) of this section. (1977, c. 792, s. 7.)

Editor's Note. — Session Laws 1977, c. 792, s. 11, makes this section effective Sept. 1, 1977.

For statement of policy relative to Session Laws 1977, c. 792, see Session Laws 1977, c. 792, s. 2.

Session Laws 1977, c. 792, s. 10, contains a severability clause.

ARTICLE 9A.

Uniform Standards Code for Mobile Homes.

§ 143-151.2. Prohibition of master meters for electric and natural gas service. — From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, dormitories, rooming houses or nursing homes, or homes for the elderly. (1977, c. 792, s. 9.)

Editor's Note. — Session Laws 1977, c. 792, s. 11, makes this section effective Sept. 1, 1977.

Session Laws 1977, c. 792, s. 10, contains a severability clause.

§§ 143-151.3 to 143-151.7: Reserved for future codification purposes.

ARTICLE 9B.

North Carolina Code Officials Qualification Board.

§ 143-151.8. Definitions. — (a) As used in this Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Code Officials Qualification Board.

(2) "Code" means the North Carolina State Building Code and related local building rules and regulations approved by the Building Code Council

heretofore or hereinafter enacted, adopted or approved pursuant to G.S. 143-138.

(3) "Code enforcement" means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof as an employee of the State or local government, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules and regulations.

(4) "Local inspection department" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and regulations enacted by the State and the local government which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings.

(5) "Qualified Code-enforcement official" means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified. (1977, c. 531, s. 1.)

Editor's Note. — Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies. — (a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;

(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;

(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;

(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;

(5) One member who is a registered architect;

(6) One member who is a registered engineer;

(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;

(8) One member who is a licensed electrical contractor;
(9) One member who is a licensed plumbing or heating contractor;
(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;
(11) One member selected from the faculty of the Institute of Government;
(12) One member selected from the Department of Community Colleges;
(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,
(14) Two members who are citizens of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the Lieutenant Governor; (7), (8), and (9) by the Speaker of the House of Representatives; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Director of the Institute of Government; (12) by the President of the Division of Community Colleges; and (13) by the Commissioner of Insurance.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1977, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: the members from subdivisions (1), (6) and (10) of subsection (a), and one member from subdivision (3).

For the terms of two years: the member from subdivision (11) of subsection (a), one member from subdivision (2), one member from subdivision (4), one member from subdivision (7), and one member from subdivision (14).

For the terms of three years: the members from subdivisions (8) and (12) of subsection (a), one member from subdivision (2), one member from subdivision (4), and one member from subdivision (14).

For the terms of four years: the members from subdivision (5), (9) and (13) of subsection (a), one member from subdivision (3), and one member from subdivision (7).

Thereafter, as the term of each member expires, his successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the Governor.

Members of the Board who are public officers shall serve ex officio and shall perform their duties on the Board in addition to the duties of their office.

(c) Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the person making the appointment. (1977, c. 531, s. 1.)

§ 143-151.10. Compensation. — Members of the Board who are State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for subsistence and travel expenses in accordance with G.S. 138-5(a)(2) and (3). All other members of the Board shall receive compensation and reimbursement for expenses in accordance with G.S. 138-5(a). (1977, c. 531, s. 1.)

§ 143-151.11. Chairman; vice-chairman; other officers; meetings; reports. — (a) The members of the Board shall select one of their members as chairman upon its creation, and shall select the chairman each July 1 thereafter.

(b) The Board shall select a vice-chairman and such other officers and committee chairmen from among its members, as it deems desirable, at the first regular meeting of the Board after its creation and at the first regular meeting after July 1 of each year thereafter. Provided, nothing in this subsection shall

prevent the creation or abolition of committees or offices of the Board, other than the office of vice-chairman, as the need may arise at any time during the year.

(c) The Board shall hold at least four regular meetings per year upon the call of the chairman. Special meetings shall be held upon the call of the chairman or the vice-chairman, or upon the written request of four members of the Board.

(d) The activities and recommendations of the Board with respect to standards for Code officials training and certification shall be set forth in regular and special reports made by the Board. Additionally, the Board shall present special reports and recommendations to the Governor or the General Assembly, or both, as the need may arise or as the Governor or the General Assembly may request. (1977, c. 531, s. 1.)

§ 143-151.12. Powers. — In addition to powers conferred upon the Board elsewhere in this Article, the Board shall have the power to:

(1) Promulgate rules and regulations for the administration of this Article including the authority to require the submission of reports and information by State agencies, local inspection departments, and local governing bodies within this State relating to the employment, education and training of Code-enforcement officials;

(2) Establish minimum standards for employment as a Code-enforcement official: (i) in probationary or temporary status, and (ii) in permanent positions;

(3) Certify persons as being qualified under the provisions of this Article to be Code-enforcement officials;

(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, community colleges, technical institutes, and other institutions concerning the development of Code-enforcement training schools and programs or courses of instruction;

(5) Establish minimum standards and levels of education or equivalent experience for all Code-enforcement instructors, teachers or professors;

(6) Conduct and encourage research by public and private agencies which shall be designed to improve education and training in the administration of Code enforcement;

(7) Adopt and amend bylaws, consistent with law, for its internal management and control; appoint such advisory committees as it may deem necessary; and enter into contracts and do such other things as may be necessary and incidental to the exercise of its authority pursuant to this Article; and,

(8) Make recommendations concerning any matters within its purview pursuant to this Article. (1977, c. 531, s. 1.)

§ 143-151.13. Required standards and certificates for Code-enforcement officials. — (a) The Board shall provide by regulation that on and after July 1, 1979, no person may engage in Code enforcement pursuant to this Article unless he possesses one of the following types of certificates, currently valid, issued by the Board attesting to his qualifications to hold such position: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c); or (iii) a probationary certificate, valid for one year only, provided for in subsection (d). To obtain a standard certificate, a person must pass an examination, as prescribed by the Board, which is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. The Board shall issue a standard certificate of qualification to each person who successfully completes the examination authorizing the person named therein to practice as a qualified Code-enforcement official in North Carolina. The certificate of

qualification shall bear the signatures of the chairman and secretary of the Board.

(b) The Board shall establish by regulation appropriate performance levels, including designation of territory and type and size of buildings and structures, and classes of qualified Code-enforcement officials and may develop examinations and prescribe course of instruction for the various levels and classes. The certificate of qualification shall set forth the performance level for which the Code-enforcement official is qualified. The Board may by regulation limit the jurisdiction of Code-enforcement officials based on the performance level for which they have qualified; provided, a person who receives a certificate of qualification at the highest performance level established by the Board shall be entitled to serve anywhere in North Carolina.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position held on June 13, 1977.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for one year to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have his probationary or temporary certificate extended beyond one year by renewal or otherwise. The Board may by regulation provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(e) The Board shall, without requiring an examination, issue a standard certificate to any person who is currently certified as a county electrical inspector pursuant to G.S. 153A-351. The certificate issued by the Board shall authorize the person to serve at the electrical inspector level approved by the Commissioner of Insurance in G.S. 153A-351.

(f) The Board shall issue a standard certificate to any person who is currently licensed to practice as a(n):

(1) Architect, registered pursuant to Chapter 83;
(2) General contractor, licensed pursuant to Article 1 of Chapter 87;
(3) Plumbing or heating contractor, licensed pursuant to Article 2 of Chapter 87;
(4) Electrical contractor, licensed pursuant to Article 4 of Chapter 87; or,
(5) Professional engineer, registered pursuant to Chapter 89;

provided the person successfully completes a short course, as prescribed by the Board, relating to the State Building Code regulations and Code-enforcement administration. The standard certificate shall authorize the person to practice as a qualified Code-enforcement official at the performance level determined by the Board, based on the type of license or registration held in any profession specified above. (1977, c. 531, s. 1.)

§ 143-151.14. Comity. — The Board may, without requiring an examination, grant a standard certificate as a qualified Code-enforcement official to any

person who, at the time of application, is certified as a qualified Code-enforcement official by a similar board of another state, district or territory where standards are acceptable to the Board and not lower than those required by this Article. A fee of not more than twenty dollars ($20.00), as determined by the Board, must be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply to every person granted a standard certificate in accordance with this section. (1977, c. 531, s. 1.)

§ 143-151.15. Return of certificate to Board; reissuance by Board. — A certificate issued by the Board pursuant to this Article shall remain valid only so long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves such employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board shall reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to G.S. 143-151.17. (1977, c. 531, s. 1.)

§ 143-151.16. Certification fees; renewal of certificates. — (a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two dollar ($2.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate. (1977, c. 531, s. 1.)

§ 143-151.17. Grounds for disciplinary actions; investigation; administrative procedures. — (a) The Board shall have the power to suspend, revoke or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;
(2) Has obtained certification through fraud, deceit, or perjury;
(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code;
(4) Has defrauded the public or attempted to do so;
(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or,
(6) Has been guilty of willful misconduct, gross negligence or gross incompetence.

(b) The Board may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of subsection (a). The Board may suspend or revoke the certification

of any qualified Code-enforcement official and refuse to grant a certificate to any applicant, whom it finds to have been guilty of one or more of the actions set out in subsection (a) as grounds for disciplinary action.

(c) TheBoard shall establish administrative rules and regulations for actions under this section which shall be in accordance with the requirements of Chapter 150A. Such rules and regulations shall include provisions for the removal of suspensions, the reissuance of certificates, and the conditions for these actions. (1977, c. 531, s. 1.)

§ 143-151.18. Violations; penalty; injunction. — On and after July 1, 1979, it shall be unlawful for any person to represent himself as a qualified Code-enforcement official who does not hold a currently valid certificate of qualification issued by the Board. Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this Article. (1977, c. 531, s. 1.)

§ 143-151.19. Administration. — (a) The Division of Engineering and Building Codes in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules and regulations promulgated pursuant to this Article, subject to the direction of the Board, except as delegated by this Article to local units of government, other State agencies, corporations, or individuals.

(b) A certified copy of this Article and all rules and regulations promulgated pursuant thereto shall be filed with the Attorney General in accordance with Article 5 of Chapter 150A. The Board shall have printed additional copies of this Article and all rules and regulations promulgated pursuant thereto which shall be available to the public at a price determined by the Board.

(c) The Board shall keep current a record of the names and addresses of all qualified Code-enforcement officials and additional personal data as the Board deems necessary. The Board annually shall publish a list of all currently certified Code-enforcement officials.

(d) Each certificate issued by the Board shall contain such identifying information as the Board requires.

(e) The Board shall issue a duplicate certificate to practice as a qualified Code-enforcement official in place of one which has been lost, destroyed, or mutilated upon proper application and payment of a fee to be determined by the Board. (1977, c. 531, s. 1.)

§ 143-151.20. Donations and appropriations. — (a) In addition to appropriations made by the General Assembly, the Board may accept for any of its purposes and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize, disburse and transfer the same, subject to the approval of the Council of State. Any arrangements pursuant to this section shall be detailed in the next regular report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received by the Board pursuant to this section shall be deposited in the State treasury to the account of the Board.

(b) The Board may provide grants as a reimbursement for actual expenses incurred by the State or political subdivision thereof for the provisions of training programs of officials from other jurisdictions within the State. The Board, by rules and regulations, shall provide for the administration of the grant program authorized herein. In promulgating such rules, the Board shall promote the most efficient and economical program of Code-enforcement training,

including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. (1977, c. 531, s. 1.)

§§ 143-151.21 to 143-151.25: Reserved for future codification purposes.

ARTICLE 9C.

Enforcement of Building Code Insulation and Energy Utilization Standards.

(This Article expires July 1, 1979.)

§ 143-151.26. Purpose and intent. — Because of present and impending shortages of energy supplies, it is imperative that efforts be made to conserve and utilize such supplies as efficiently as possible. As a mechanism for achieving such efficiency, the State Building Code has been amended to include requirements for insulation and efficient energy utilization in buildings erected in this State. However, over half of the counties of the State and many of its smaller towns presently lack inspectors to enforce these provisions. In addition, in view of the widespread publicity accorded this problem and proposed tax inducements at both the State and federal levels for installing insulation and other measures to improve efficiency of energy utilization, there is a danger that consumers may be defrauded by unscrupulous sellers or installers of such materials. This Article is intended to provide an interim solution to these two problems, pending further guidance from federal authorities and general enforcement of the Code in all areas of the State. (1977, c. 703, s. 1.)

Editor's Note. — Session Laws 1977, c. 703, s. 12, provides: "This act shall become effective upon ratification and shall remain in effect until July 1, 1979. The 1979 General Assembly shall review experience under this act and such other relevant information as may enable it to achieve the objectives of this act more effectively, and may enact such further legislation as appears desirable."

§ 143-151.27. Designation of local inspectors. — Prior to September 1, 1977, the superintendent of each county, city, or joint inspection department (created under the provisions of Chapter 153A, Article 18, Part 4, or Chapter 160A, Article 19, Part 5, or Chapter 160A, Article 20, Part 1, or by local or special act of the General Assembly) shall designate the person or persons in that department responsible for enforcement of the insulation and energy utilization standards of the State Building Code and send their names and addresses to the Engineering and Building Codes Division of the North Carolina Department of Insurance; provided, nothing herein shall be construed to require the hiring of additional inspection personnel in any county, city, or joint inspection department which is in existence on June 23, 1977. In every county or city which does not have an inspection department, the governing board shall designate one or more "energy and insulation inspectors" and make such notification to the Department of Insurance; the territorial jurisdiction of such inspectors shall be the jurisdiction of the appointing unit, as specified in G.S. 160A-360, and they shall possess all applicable enforcement powers of a county or city inspection department. (1977, c. 703, s. 2.)

§ 143-151.28. Training course for inspectors. — Prior to January 1, 1978, and periodically thereafter, the Engineering and Building Codes Division of the Department of Insurance shall make available to the personnel designated pursuant to G.S. 143-151.27 a course or courses of instruction covering the insulation and energy utilization requirements of the State Building Code for dwellings or other structures which are not required by law to be designed by a registered architect or professional engineer. (1977, c. 703, s. 3.)

§ 143-151.29. Permits. — On and after January 1, 1978, no person, firm, or corporation may for a consideration install, alter, or restore any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards without first securing a permit either from the inspection department with jurisdiction over the work site, or in the absence of such a department, from an energy and insulation inspector with appropriate jurisdiction. Such permit may be either (i) a general building permit evidencing full compliance with all applicable requirements of the State Building Code and other State and local laws, issued by an inspection department, or (ii) a special permit issued by an energy and insulation inspector evidencing compliance with the insulation and energy utilization standards of the State Building Code. (1977, c. 703, s. 4.)

§ 143-151.30. Contents of permit. — A general building permit shall meet all the requirements of G.S. 153A-357 or G.S. 160A-417. A special permit shall comply with applicable requirements of those sections, but instead of containing a provision that the work done "shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations" it shall contain a provision that the work done "shall comply with the insulation and energy utilization standards of the State Building Code." Either type of permit shall give the name of the installer, his address, the number of any license or permit he has to engage in the profession or business of installing insulation or the type of installation proposed, and the estimated cost of the installation. (1977, c. 703, s. 5.)

§ 143-151.31. Persons entitled to permit. — No permit shall be issued under this Article to any person, firm, or corporation who is not either (i) licensed as a contractor to do the proposed work, under Chapter 87 of the General Statutes, or (ii) the holder of an annual license or permit to do such work issued by the county or city with jurisdiction over the site, pursuant to G.S. 153A-134, G.S. 160A-194, or a special or local act of the General Assembly; provided, however, that this requirement shall not apply to an owner working upon his own building nor to an installer working under the supervision of a registered architect or professional engineer, whose name and registration number shall appear upon the face of the permit. (1977, c. 703, s. 6.)

§ 143-151.32. Inspections by inspection department or energy and insulation inspector. — During the progress of the work and at its conclusion, the inspection department or energy and insulation inspector shall make inspections as prescribed by G.S. 153A-360, G.S. 153A-363, G.S. 160A-420, and G.S. 160A-423. The installer shall notify the inspector at times specified by the inspector when the work is ready for different stages of inspection. When only a special permit has been issued, the energy and insulation inspector shall issue a certificate of compliance which states only that the work complies with the insulation and energy utilization standards of the State Building Code. When work is done on an existing building, it may be occupied while work is in progress and prior to issuance of the certificate of compliance. (1977, c. 703, s. 7.)

§ 143-151.33. Inspection by architect or engineer. — When work done under a permit is required under the provisions of Chapters 83 and 89C of the General Statutes or any other statute to be done pursuant to plans or specifications prepared by a registered architect or professional engineer, or when the work was done under the supervision of a registered architect or professional engineer as permitted by G.S. 143-151.31, the architect or engineer, or both, shall inspect the work done and shall issue a certificate of compliance with the insulation and energy utilization standards of the State Building Code to the

local inspection department or energy and insulation inspector and to the owner. (1977, c. 703, s. 8.)

§ 143-151.34. Contract provisions. — All sales contracts or other contracts executed for the installation of insulation or other energy utilization materials or equipment shall contain a provision that the work will meet the requirements of the State Building Code. Any guarantees relating to quality of materials, expected performance, quality of work, or equipment to be installed shall be in writing and a copy thereof shall be delivered to the owner and shall become a part of the contract. (1977, c. 703, s. 9.)

§ 143-151.35. License revocation. — Willful or repeated violation of the State Building Code requirements as to insulation or energy utilization equipment or materials shall be a basis for revocation of the installer's license as a contractor under Chapter 87 of the General Statutes or as an installer under a local ordinance adopted pursuant to G.S. 153A-134 or G.S. 160A-194. Any inspection department or energy and insulation inspector having knowledge of such violations shall bring them to the attention of the appropriate licensing authority for disciplinary action. (1977, c. 703, s. 10.)

§ 143-151.36. Penalty. — Willful violation of any provision of this Article shall constitute a misdemeanor punishable in the discretion of the court. In addition to or in lieu of such remedy, the city or county with jurisdiction or the State Commissioner of Insurance may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation. (1977, c. 703, s. 11.)

ARTICLE 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law-Enforcement Officers' Benefit and Retirement Fund.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this Article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this Article, he shall contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Benefit and Retirement Fund, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Commissioners. Provided, that any officer so contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law-enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the fund for credit to the individual account of such member any one or more of the following:

(1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen percent (15%) of such member's compensation; and

(2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners; and

(3) A sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law-enforcement officer, a five percent (5%) contribution and a sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund or Wildlife Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law-enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law-enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law-enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided

by Chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law-Enforcement Officers' Benefit and Retirement Fund.

(j) All officers who have contributed to the Retirement Fund herein provided for, and who have at least 15 years of creditable service in the fund, shall be eligible for reduced retirement benefits at age 50. The Board of Commissioners is authorized, under the rules and regulations promulgated by it, to determine when an officer has accumulated at least 15 years of creditable service, and it shall not be necessary that the member be actively employed as an officer at the time of his application for retirement benefits.

All officers who have contributed to the Retirement Fund herein provided for, and who have at least 10 years of membership service in the fund, shall be eligible for retirement benefits at age 55. The Board of Commissioners is authorized, under the rules and regulations promulgated by it, to determine when an officer has accumulated at least 10 years of membership service, and it shall not be necessary that the member be actively employed as an officer at the time of his application for retirement benefits.

(m) "Law-enforcement officers" in the meaning of this Article shall mean all officers employed by the State of North Carolina or any political subdivision thereof, who are clothed with the full power of arrest and whose primary duty is that of enforcing on public property the criminal laws of the State and/or serving civil processes. The term "law-enforcement officers," for purposes of participating in this fund and for receiving benefits under this section, includes otherwise qualified persons who are members of the fund and who are participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall be entitled to any death benefits to which he would otherwise be entitled regardless of whether he and his employers are making contributions to the member's account during the exchange period except that no duplicate benefits shall be paid.

(x) Notwithstanding any of the foregoing provisions, the benefits to each beneficiary on the retirement rolls as of June 30, 1977, shall be increased by five percent (5%) of the benefits being received by each such beneficiary as of June 30, 1977.

(y) Notwithstanding any of the foregoing provisions, a member upon retirement in accordance with subsection (1) of Section 5 of Rules and Regulations incorporated and effected July 1, 1973, by the Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund, shall receive a basic service retirement allowance equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service, and reduced by one third of one percent ($^1/_3$ of 1%) for each month by which his date of retirement precedes his fifty-fifth birthday, except that no such reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the time of his retirement, and any member who retires with 30 or more years of creditable service shall be considered eligible for benefits at any age.

Any member upon retirement in accordance with subsection (3) of Section 5 of Rules and Regulations incorporated and effected July 1, 1973, by the Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund shall receive a basic disability retirement allowance equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation multiplied by the number of years of creditable service which he would have had if he had continued in service until his fifty-fifth birthday. Average final compensation shall mean the average annual compensation of a member during

the four consecutive years of membership service (48 consecutive employment months) that produce the highest average annual compensation. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090.)

Local Modification. — Village of Pinehurst: 1977, c. 245.

Editor's Note. —

The 1973 amendment substituted "a matching contribution" for "an amount equal to three times the value of his prior service and an amount equal to three times the cost of matching his contribution" in the first sentence of the last paragraph of subsection (i).

The first 1977 amendment added the second sentence of subsection (m).

The second 1977 amendment, effective July 1, 1977, substituted the present first, second and third sentences of the second paragraph of subsection (i) for "In order for an officer to be eligible for retirement benefits under this Article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board," deleted "voluntarily" preceding "contributing" in the fourth sentence of the second paragraph of subsection (i) and preceding "pay into the fund" in the fifth sentence of the second paragraph of subsection (i), and substituted "five percent (5%)" for "matching" in the first sentence of the fourth paragraph of subsection (i). The amendment also rewrote subsection (j) and added subsections (x) and (y).

Session Laws 1973, c. 572, cited in this note in the Replacement Volume, was amended by Session Laws 1973, c. 874.

Session Laws 1977, c. 783, s. 5, contains a severability clause.

Only the subsections changed or added by the amendments are set out.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.1. Purpose. — In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firemen, rescue squad workers and senior Civil Air Patrol members killed in the discharge of their official duties. Official duties of a fireman is defined as being those duties performed while in training or in the course of responding to or returning from a fire call within his own fire district or a call for assistance from any other fire department or organization within the State of North Carolina. (1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2; 1975, c. 284, s. 6; 1977, c. 797.)

Editor's Note. —

The 1975 amendment deleted "and" following "firemen" and inserted "and senior Civil Air Patrol members."

The 1977 amendment added the second sentence.

Session Laws 1975, c. 284, s. 5, changed the heading of this Article from "Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act" to "Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act."

§ 143-166.2. Definitions. — (a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death

as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker or senior member of the Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties.

(d) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction. The term "fireman" shall mean "eligible fireman" or "fireman" as defined in G.S. 118-23. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Auditor on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Human Resources pursuant to Article 26 of Chapter 130 of the General Statutes. The Department of Human Resources shall furnish a list of ambulance service members to the State Auditor on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members, 18 years of age and older, who are in good standing, currently trained and so certified by the Secretary of Crime Control and Public Safety or his delegate.

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol

member was absent during this six-month period due to service in the armed forces of this country. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048.)

Editor's Note. —

The second 1973 amendment rewrote subdivision (3) so as to include within the definition death as a result of extreme exercise or extreme activity experienced in the course and scope of official duties. The amendment also added at the end of the third sentence of subdivision (4) the language beginning "which is eligible" and added the fourth and fifth sentences of subdivision (4).

The first 1975 amendment corrected an error in the first 1973 amendatory act by substituting "indicates" for "indicated" near the end of the former introductory language.

The second 1975 amendment eliminated the former introductory paragraph, inserted the references to senior Civil Air Patrol members throughout subsections (a), (b), (c) and (e), added the sixth sentence of subsection (d) and made minor changes in wording throughout the section.

The 1977 amendment rewrote subsection (d).

§ 143-166.3. Payments; determination. — (a) When any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member shall be killed in the line of duty, the Industrial Commission shall award a death benefit to be paid in the amounts set forth in subsection (b) to the following:

(1) The spouse of such officer, fireman, rescue squad worker or senior Civil Air Patrol member if there be a surviving spouse; or

(2) If there be no spouse qualifying under the provisions of this Article, then payments shall be made to any surviving dependent child of such officer, fireman, rescue squad worker or senior Civil Air Patrol member and if there be more than one surviving dependent child, then said payment shall be made to and equally divided among all surviving dependent children; or

(3) If there be no spouse and no dependent child or children qualifying under the provisions of this Article, then payments shall be made to the surviving dependent parent of such officer, fireman, rescue squad worker or senior Civil Air Patrol member and if there be more than one surviving dependent parent then said payments shall be made to and equally divided between the surviving dependent parents of said officer, fireman, rescue squad worker or senior Civil Air Patrol member.

(b) Payment shall be made to the person or persons qualifying therefor under subsection (a) in the following amounts:

(1) At the time of the death of an officer, fireman, rescue squad worker or senior Civil Air Patrol member, ten thousand dollars ($10,000) shall be paid to the person or persons entitled thereto.

(2) Thereafter, five thousand dollars ($5,000) shall be paid annually to the person or persons entitled thereto until the sum of the initial payment and each annual payment reaches twenty-five thousand dollars ($25,000).

(3) In the event there is no person qualifying under subsection (a) of this section, twenty-five thousand dollars ($25,000) shall be paid to the estate of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member at the time of death.

(c) In the event that any person or persons eligible for payments under subsection (a) of this section shall become ineligible, and other eligible person or persons qualify for said death benefit payments under subsection (a), then they shall receive the remainder of any payments up to the limit of twenty-five thousand dollars ($25,000) in the manner set forth in subsection (b) of this section.

(d) In the event any person or persons eligible for payments under subsection (a) of this section shall become ineligible and no other person or persons qualify

for payments under that subsection and where the sum of the initial payment of ten thousand dollars ($10,000) and each subsequent annual payment of five thousand dollars ($5,000) does not total twenty-five thousand dollars ($25,000), then the difference between the total of the payments made and twenty-five thousand dollars ($25,000) shall immediately be payable to the estate of the deceased officer, fireman, rescue squad worker, or senior Civil Air Patrol member. (1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960; 1973, c. 634, s. 2; 1975, c. 284, s. 8.)

Editor's Note. — The 1975 amendment deleted "or" preceding "rescue squad worker" and inserted "or senior Civil Air Patrol member" following "rescue squad member" throughout the section.

§ 143-166.7. Applicability of Article. — The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. (1965, c. 937; 1973, c. 634, s. 3; 1975, c. 284, s. 9.)

Editor's Note. — The 1975 amendment deleted "or" preceding "rescue squad worker," inserted "or senior Civil Air Patrol member" and substituted "May 13, 1975" for "May 22, 1973."

ARTICLE 13.

Publications.

§ 143-169. Limitations on publications.

(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the publication is a project of the Department of Natural Resources and Community Development, or is a part of the magazine "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission; or

(3) When the express approval of the Department of Administration is obtained. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in subdivision (2) of subsection (b).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (2) of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsection (a) was not changed by the amendments, it is not set out.

§ 143-169.1. State agency public document mailing lists to be updated. — (a) On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included.

(b) For the purposes of this section, the term "public document" shall mean any annual, biennial, regular or special report or publication of which at least 500 copies are printed for distribution by mail to the general public.

(c) For the purposes of this section, the term "agency" shall mean and include, as the context may require, State department, institution, commission, committee, board, division, bureau, officer or official; provided, however, the provisions of this section shall not apply to the General Assembly of North Carolina. (1975, c. 362, s. 1.)

Editor's Note. — Session Laws 1975, c. 362, s. 2, makes the act effective July 1, 1976.

ARTICLE 14.

North Carolina Zoological Authority.

§§ 143-171 to 143-176.1: Repealed by Session Laws 1973, c. 1262, s. 85, effective July 1, 1974.

Cross Reference. — As to the North Carolina Zoological Park Council, see §§ 143B-335, 143B-336.

§ 143-177.1. North Carolina Zoological Park Fund. — All gifts made to the North Carolina Zoological Park for the purposes of this Article shall be exempt from every form of taxation including, but not by the way of limitation, ad valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any property acquired under the provisions of this Article shall be deposited in the North Carolina State treasury and shall be credited to the North Carolina Zoological Park. (1969, c. 1104, s. 9; 1973, c. 1262, s. 85.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Park" for "Garden" near the beginning of the section and "North Carolina State treasury and shall be credited to the North Carolina Zoological Park" for "North Carolina Zoological Garden treasury" at the end of the section.

§ 143-177.3. Sources of funds. — It is the intent of this Article that the funds for the creation, establishment, construction, operation and maintenance of the North Carolina Zoological Park shall be obtained primarily from private sources; however, the Council under the supervision and approval and with the assistance of the Secretary of Natural Resources and Community Development is hereby authorized to receive and expend such funds as may from time to time become available by appropriation or otherwise from the State of North Carolina; provided, that the North Carolina Zoological Park Council shall not in any manner pledge the faith and credit of the State of North Carolina for any of its purposes. (1969, c. 1104, s. 11; 1973, c. 1262, s. 85; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote this section.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the middle of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 15.

Council of State Governments.

§§ 143-178 to 143-185: Repealed by Session Laws 1975, c. 879, s. 25, effective July 1, 1975.

Cross Reference. — As to the North Carolina Council on Interstate Cooperation, see §§ 143B-379 through 143B-384.

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§§ 143-195 to 143-198.1: Repealed by Session Laws 1973, c. 1331, s. 2, effective February 1, 1976.

Cross References. — For present provisions as to rule making by administrative agencies, see §§ 150A-9 through 150A-17. For present provisions as to publication of administrative rules, see §§ 150A-58 through 150A-64. As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-204: Repealed by Session Laws 1977, c. 996, s. 3, effective July 1, 1977.

Cross Reference. — For present provisions as to allotments from the Contingency and Emergency Fund to outdoor historical dramas, see § 143-204.8.

ARTICLE 19C.

Outdoor Historical Dramas.

§ 143-204.8. Allotments to outdoor historical dramas. — (a) Upon the application of an outdoor historical drama corporation or trust, approved by the Secretary of Cultural Resources, the Governor and the Council of State may order an allotment from the Contingency and Emergency Fund of the State not to exceed fifteen thousand dollars ($15,000) a year to that outdoor historical drama corporation or trust to aid in the production of an outdoor historical drama; provided that if that corporation or trust has received State funds from any source whatsoever, including direct appropriations, during a fiscal year the Governor and the Council of State during that year may not order an allotment which, when added to the State funds otherwise received, would exceed fifteen thousand dollars ($15,000). No outdoor historical drama corporation or trust shall, during any one fiscal year, receive both an allotment under this Article from the Contingency and Emergency Fund and one from money appropriated to the Department of Cultural Resources for programs funded by the enactment of House Bill 947 of this Session [Session Laws 1977, Chapter 986].

(b) An allotment shall only be made under this section upon evidence submitted to the Governor and Council of State by the Secretary of Cultural Resources that during the immediately preceding season of production, the drama was operated at a deficit because of inclement weather or other circumstances beyond the control of the corporation or trust and that contributions or gifts made to the corporation or trust are deductible from net income for income tax purposes under G.S. 105-147(15).

(c) For purposes of this section, an "outdoor historical drama corporation or trust," means only the following corporations or trusts presenting outdoor historical dramas:

Corporation or Trust	*Outdoor Historical Drama*
Cherokee Historical Association, Incorporated	"Unto These Hills"
The Committee for an Outdoor Drama at Bath, Incorporated	"Blackbeard — The Knight of the Black Flag"
The Duplin Outdoor Drama Society, Incorporated	"The Liberty Cart: A Duplin Story"
Halifax County Historical Association	"First for Freedom"
The Moore County Historical Association, Incorporated	"The House in the Horseshoe"
The Outdoor Theatre Fund Charitable Trust	"From This Day Forward"
"Revolution!", Incorporated	"Revolution!"
Roanoke Island Historical Association, Incorporated	"The Lost Colony"
Robeson Historical Drama, Incorporated	"Strike at the Wind"
Snow Camp Historical Drama Society, Incorporated	"Sword of Peace"
Southern Appalachian Historical Association, Incorporated	"Horn in the West"
The Waxhaws Historical Festival and Drama Association	"Listen and Remember"

The above listing of dramas is for informational purposes only and shall not be construed to limit the eligibility of the specified outdoor historical drama corporation or trust to receive allotments under this section.

(d) An outdoor historical drama corporation or trust which has applied for or received an allotment under this section shall permit the State Auditor to inspect and audit its financial records. (1977, c. 996, s. 1.)

Editor's Note. — Session Laws 1977, c. 996, s. 5, makes the act effective July 1, 1977.

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the

program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-211. Declaration of public policy. — It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Natural Resources and Community Development as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Cross References. — As to organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Board of Natural Resources and Community Development, see § 143B-280. As to the Environmental Management Commission, see §§ 143B-282 through 143B-285.

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" in the fifth sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the fifth sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-212: Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

§ 143-213. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(6) The term "area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.

(7) "Commission" means the Environmental Management Commission created under the provisions of this Article and the provisions of the Executive Organization Act of 1973.

(8) "Department" means the Department of Natural Resources and Community Development.

(11) The term "effective date" means the date, as established pursuant to the statutory powers of the Environmental Management Commission and announced by official regulations of the Environmental Management Commission after which the statutory provisions

designated by the Environmental Management Commission shall become applicable and enforceable, with respect to persons within one or more watersheds, the State as a whole or one or more "areas of the State" as designated by the Environmental Management Commission.

(16) The term "standard" or "standards" means such measure or measures of the quality of water and air as are established by the Environmental Management Commission pursuant to G.S. 143-214.1 and G.S. 143-215.

(21) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Environmental Management Commission for all statutory purposes and to be defined by the Environmental Management Commission in its official regulations.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Cross References. — As to the organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Board of Natural Resources and Community Development, see § 143B-280.

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, rewrote subdivisions (7), which formerly defined "Board" as the Board of Water and Air Resources, and (8), which formerly defined "Department" as the Department of Water and Air Resources. The amendment also substituted "Environmental Management Commission" for "Board" in subdivisions (6), (11), (16) and (21).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (8).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only subdivisions (6), (7), (8), (11), (16) and (21) and the introductory language are set out.

§ 143-214: Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

§ 143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission. — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Environmental Management Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Environmental Management Commission, are insufficiently important to justify classification or control under this Article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Environmental Management Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(b) Criteria for Classification. — In developing and adopting classifications, and the standards applicable to each, the Environmental Management Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other

variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards. — In establishing the standards applicable to each classification, the Environmental Management Commission shall consider and the standards when finally adopted and published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications. — In assigning to each identified water the appropriate classifications (with its accompanying standards), the Environmental Management Commission shall consider, and the decision of the Environmental Management Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and should take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(e) Proposed Adoption and Assignment of Classification. — Prior to the adoption by the Environmental Management Commission of the series of classifications and standards applicable thereto as specified in subsection (a)(1) of this section, prior to the assignment by the Environmental Management Commission of any such classifications to any waters as specified in subsection (a)(3) of this section, and prior to any modification of any of such actions previously taken by the Environmental Management Commission, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the

Environmental Management Commission proposes to take. The notice shall either include details of such proposed action or, where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the Department of Natural Resources and Community Development in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural Resources and Community Development pursuant to the provisions of G.S. 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Department on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classification. — Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Environmental Management Commission pursuant to this section, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Environmental Management Commission shall likewise publish as part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.1 and 143-215.2 to persons within such watershed or watersheds.

(g) Environmental Management Commission's Power to Modify or Revoke. — The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part; any such modification or revocation, however, to be subject to the procedural requirements of this Article. (1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1; 1973, c. 1262, s. 23; 1975, c. 19, s. 50; c. 583, s. 8; c. 655, s. 5; 1977, c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "the office of the Board" near the end of subdivision (1) of subsection (e), substituted "Department of Natural and Economic Resources" for "Board" near the end of subdivision (2), and "Department" for "Board" in the first sentence of subdivision (3), of subsection (e), and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The first 1975 amendment corrected an error in the 1973 amendatory act by inserting "the" preceding "Department of Natural and Economic Resources" near the end of subdivision (1) of subsection (e).

The second 1975 amendment added subdivision (4) of subsection (d).

The third 1975 amendment added subdivision (5) of subsection (d).

The 1977 amendment substituted "Natural Resources and Community Development" for

"Natural and Economic Resources" near the end of subdivisions (1) and (2) of subsection (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-214.2. Prohibited discharges.

(c) The discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited, except where such discharges are permitted pursuant to regulation duly adopted by the Environmental Management Commission. (1973, c. 698, s. 2; c. 1262, s. 23.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 143-215. Effluent standards and limitations. — (a) The Environmental Management Commission is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations may provide, without limitation, standards or limitations for any point source or sources; standards, limitations or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations.

(b) The effluent standards and limitations developed and adopted by the Environmental Management Commission shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters.

(c) In adopting effluent standards and limitations the Environmental Management Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control Program. It is the intent of the General Assembly that the effluent standards and limitations adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1.)

Editor's Note. —

The second 1973 amendment added subsection (c).

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in three places.

The 1975 amendment deleted "concomitant with the public interest therein and the best use thereof; to preserve and protect the public health, safety and welfare; to promote propagation of and protect fish, shellfish and wildlife; to prevent damage to private and public property; and to preserve and enhance esthetic values" at the end of subsection (b).

§ 143-215.1. Control of sources of water pollution; permits required. — (a) No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any outlets into the waters of the State;

(2) Construct or operate any sewer system, treatment works, or disposal system within the State;

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water;

(5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Environmental Management Commission under the provisions of this Article;

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Environmental Management Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the Department of Human Resources determines and advises the Environmental Management Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Environmental Management Commission has referred the complete plans and specifications to the Commission for Health Services and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Environmental Management Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Environmental Management Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Environmental Management Commission's Power as to Permits. — The Environmental Management Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources.

The Environmental Management Commission shall have the power:

(1) To grant a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this Article;

(2) Repealed by Session Laws 1975, c. 583, s. 4.

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Environmental Management Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(c) Applications for Permits and Renewals for Pretreatment Facilities and for Other Facilities Discharging to the Surface Waters. —

(1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Environmental Management Commission may prescribe the form of such applications. All applications shall be filed with the Environmental Management Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Environmental Management Commission may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Environmental Management Commission deems necessary to the proper evaluation of the application.

(2) a. The Department of Natural Resources and Community Development, pursuant to appropriate rules of procedure adopted by the Environmental Management Commission, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Environmental Management Commission concurs in the proposed determination, it shall cause notice of the application and of the proposed determination, along with any other data that the Environmental Management Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Environmental Management Commission through its official rules, shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the State lies and by publication of the notice one time in a newspaper having general circulation within the county.

b. Permits for discharges to the surface waters of domestic wastes for single family dwellings of 1,000 gallons per day or less shall be issued without the above required notice. The Commission shall by regulation delegate the issuance of such permits to local health departments.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Environmental Management Commission within 30 days following date of the notice of application. The Environmental Management Commission shall consider all such requests for hearing, and if the Environmental Management Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of application was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Environmental Management Commission shall also cause a copy of the notice thereof to be posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal system lies, and shall cause the notice to be published at least one time in a newspaper having general circulation in such county. The Environmental Management Commission, through its official rules, shall prescribe the form and content of the notices.

The Environmental Management Commission shall adopt appropriate rules and regulations governing the procedures to be followed in such hearings. If the hearing is not conducted by the Environmental Management Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Environmental Management Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Environmental Management Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Environmental Management Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. — All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit or renewal within 90 days after all data, plans, specifications and other required information have been furnished by the applicant, shall be treated as approval of such application. The Environmental Management Commission shall adopt such rules and regulations as it deems necessary, establishing the form of and procedures for processing applications, permits and renewals. Such regulations may require the submission of plans and specifications and other information as the Environmental Management

Commission deems necessary to the proper evaluation of an application. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Environmental Management Commission.

(e) Hearings and Appeals. — Any person whose application for a permit or renewal is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board" and "Environmental Management Commission" for "it" in the first sentence of subdivision (2) of subsection (c) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The first 1975 amendment corrected an error in the third 1973 amendatory act by inserting "the" preceding "Environmental Management Commission" the first time those words appear in subdivision (2) of subsection (c).

The second 1975 amendment deleted "After the effective date of water quality standards and classifications established pursuant to G.S. 143-214.1 or effluent standards or limitations established pursuant to G.S. 143-215" at the beginning of subsection (a), deleted "or to an extent beyond such minimum limits as the Environmental Management Commission may prescribe, by way of general exemption from the provisions of this subdivision, by its official regulations" at the end of subdivision (4) of that subsection, rewrote the first paragraph of subsection (b), substituted "Article" for "section" at the end of subdivision (1) of the second paragraph of subsection (b), repealed subdivision (2) of that paragraph and substituted "Article" for "section" at the end of the last paragraph of subsection (b).

The third 1975 amendment designated the first paragraph of subdivision (c)(2) as paragraph a, added paragraph b of that subdivision and substituted "Not later than 60" for "Forty-five" at the beginning of subdivision (4) of subsection (c).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subdivision (2) of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.2. Special orders. — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. Every special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3; c. 1262, s. 23; 1975, c. 19, s. 52.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

The 1975 amendment corrected an error in the first 1973 amendatory act by inserting "pursuant" following "a permit issued" near the beginning of the introductory paragraph of subsection (d).

§ 143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers. — (a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of Articles 21, 21A and 21B and rules of procedure establishing and amplifying the procedures to be followed in the administration of these Articles, including rules and regulations providing for the charge of a reasonable fee for processing or publicizing applications for permits issued under these Articles and for reviewing, processing and publicizing applications for construction grant awards under the Federal Water Pollution Control Act

amendments of 1972; provided, however, that there shall be no fee charged to any farmer who submits an application which pertains to his farming operations. Any fees related to construction grants charged by the Commission shall be consistent with federal regulations. Fees for processing permits under these Articles shall not exceed one hundred dollars ($100.00) for any single permit application. No regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4. Rules or regulations relating to permit or grant application fees shall be subject to a public hearing, prior to adoption, held under procedures established by the Environmental Management Commission.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Environmental Management Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.

(4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural Resources and Community Development; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to persons other than its own members and the designated employees of

the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Environmental Management Commission has occurred, or, in the discretion of the Environmental Management Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Environmental Management Commission may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Environmental Management Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Environmental Management Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Environmental Management Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Environmental Management Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department of Natural Resources and Community Development and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department of Natural Resources and Community Development shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Department of Natural Resources and Community Development shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department of Natural Resources and

Community Development to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Department of Natural Resources and Community Development on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Environmental Management Commission, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Environmental Management Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Environmental Management Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Environmental Management Commission believes to have a direct interest therein.

Any person who is adversely affected by the order of the Environmental Management Commission may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

(9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Environmental Management Commission pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or 143-215.109, the Environmental Management Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Environmental Management Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Environmental Management Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Environmental Management Commission implementing the provisions of this Article to be certified by the Environmental Management Commission in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility.

(11) Local Air Pollution Control Programs.—

a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Environmental Management Commission shall certify any local program which:

1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;
2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
4. Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air

pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section and is so certified by the Environmental Management Commission.

c. If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such areawide program as the only acceptable alternative to direct State administration.

d. 1. If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.

2. If, after such hearing the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

4. If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

5. Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with

the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.

6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.
7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article and other applicable requirements of law.
8. Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.

e. Local air pollution control programs authorized.—

1. The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

I. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

II. Air-quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

III. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

IV. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this subdivision;

V. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

VI. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Department of Natural Resources and Community Development and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars ($250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.

4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other

relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same.

5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.
6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

f. Administration of county or municipal air pollution control programs. — Subject to the approval of the Environmental Management Commission as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

1. Establishing a program under the administration of the duly elected governing body of the county or municipality;
2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

g. Creation and administration of regional air pollution control programs. — In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and

comprise the total area contained in any region designated by the Environmental Management Commission for an areawide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Environmental Management Commission shall fix a place and time for a hearing before the Environmental Management Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall either affirm, modify or set aside the order of the assistant director.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

(13) To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification,

extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Environmental Management Commission may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(b) Research Functions. — The Department of Natural Resources and Community Development shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department of Natural Resources and Community Development may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department of Natural Resources and Community Development shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article. All State departments shall advise with and cooperate with the Department of Natural Resources and Community Development on matters of mutual interest.

(c) Relation with the Federal Government. — The Environmental Management Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control.

(d) Relations with Other States. — The Environmental Management Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Environmental Management Commission for a variance from rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Environmental Management Commission may grant such variance, but only after public hearing on due notice, if it finds that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology economically achievable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act amendments of 1972 or the Federal Clean Air Act; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act amendments of 1972 or the Federal Clean Air Act shall also be entitled to the same variance from or modification in rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215,

and 143-215.107, respectively. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, substituted "To direct that such investigation be conducted" for "To conduct such investigations" at the beginning of subdivision (a)(2), substituted "Commission or Department" for "Board" near the middle of the last sentence of subdivision (a)(2), substituted "the Secretary or any other qualified employee of the Department of Natural and Economic Resources" for "its director, assistant director, or to any other qualified employee of the Board" and "the designated employees of the Department" for "its own qualified employees" in the first sentence of (a)(4), substituted "direct the investigation of" for "investigate" near the beginning of the first sentence of the first paragraph of subdivision (a)(7), rewrote the second sentence of the first paragraph of subdivision (a)(7) and substituted "the Commission may deem" for "it deems" in the third sentence of the first paragraph of subdivision (a)(7), substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in the last sentence of the first paragraph of subdivision (a)(7), rewrote the third sentence of the second paragraph of subdivision (a)(7), substituted "the Secretary of the Department with the concurrence of the Governor" for "the assistant director, with the approval of the director and the concurrence of the Governor" in the second sentence of the first paragraph of subdivision (a)(12), substituted "Secretary" for "assistant director" near the beginning of the first sentence of the second paragraph of subdivision (a)(12), deleted "the approval of the director and" preceding "the concurrence of the Governor" in the first sentence of the second paragraph of subdivision (a)(12) and inserted "or the Department" near the beginning of subsection (d). The amendment also substituted "Department of Natural and Economic Resources" for "Board" in two places in the third sentence of the first paragraph of subdivision (a)(7) and in the first sentence of the second paragraph of subdivision (a)(7), and for "State Board of Water and Air Resources" in paragraph e2 of subdivision (a)(11) and for "Board" in four places in subsection (b), and substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources" throughout the rest of the section.

The first 1975 amendment substituted the present proviso in subdivision (2) of subsection (a) for a provision which read: "Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision," and substituted "such variances, and" for "such variance, or" near the beginning of subdivision (2) of subsection (e) and added the proviso in that subdivision.

The second 1975 amendment substituted "Articles 21, 21A and 21B" for "this Article" near the beginning of subdivision (1) of subsection (a), substituted the language beginning "these Articles, including rules and regulations" and ending "any single permit application" for "this Article: Provided, that" in that subdivision and added the last sentence of that subdivision.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in subdivision (a)(4), throughout subdivision (a)(7), in one place in paragraph e2 of subdivision (a)(11), and throughout subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Power of Regional Boards to Adopt Air Quality and Emission Control Standards. — Subsection (a)(11)g does not expressly confer authority upon regional air pollution control boards to determine and adopt air quality and emission control standards. The authority, if any, must be found in the text thereof. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Judicial Notice of Regional Board's Rules and Regulations. — The Supreme Court cannot take judicial notice that a regional air pollution board known as the Western North Carolina Regional Air Pollution Agency has been created by two or more municipalities or counties by joint resolution or contract. A fortiori, the Court cannot take judicial notice of the contents of any rules and regulations which such a board may have adopted. The record of a criminal enforcement action must present a proper basis for passing upon whether rules and regulations adopted by such a board have constitutional validity. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Sufficiency of Warrant Charging Violation of Regional Board's Regulation. — A warrant which charges a violation of a regulation of the Western North Carolina Regional Air Pollution Agency, but does not allege verbatim or in substance the provisions of the alleged

regulation, nor allege when and under what circumstances the alleged regulation was adopted, nor that a copy thereof has been filed with the State Board of Water and Air Resources (now the Environmental Management Commission) and with the clerk of court of the county is insufficient to show that violation of the regulation constitutes a criminal offense. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

§ 143-215.4. General provisions as to procedure; seal; hearing officer. — (a) Persons Entitled to Notice, Mailing List. — In any proceeding pursuant to G.S. 143-215.1, 143-215.2, 143-215.3, the Department shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-214.1 and 143-215, the Department shall give notice as provided by that section, and it shall also give notice of all the official acts of the Commission (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Environmental Management Commission's Regulations and Rules. — All official acts of the Environmental Management Commission which have or are intended to have general application effect shall be incorporated either in the Environmental Management Commission's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Environmental Management Commission be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Attorney General in the manner provided by Chapter 150A of the General Statutes. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Department in sufficient numbers to satisfy all reasonable requests therefor. The Department shall codify the Commission's regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices. — All notices which are required to be given by the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Environmental Management Commission by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings. — The following provisions, together with any additional provisions not inconsistent herewith which the Environmental Management Commission may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to G.S. 143-215.1 and 143-215.2 or 143-215.3, except those held pursuant to subsection (a)(12) of G.S. 143-215.3, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Department to any person who is, or is entitled to be, a party to the proceedings with respect to which such

hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Environmental Management Commission or its authorized agent or agents, and the hearing shall be open to the public. The Environmental Management Commission, or its authorized agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department.

(4) The Environmental Management Commission shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Environmental Management Commission, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Environmental Management Commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the Environmental Management Commission shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Environmental Management Commission proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Environmental Management Commission's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission is based.

(10) As previously recited above, the Department shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The

Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(e) One or more qualified employees of the Department of Natural Resources and Community Development may be designated as hearing officers to conduct any hearings provided for in this Article in accordance with the procedures established for such hearings by law and the official rules and regulations of the Environmental Management Commission. Unless otherwise provided in the Environmental Management Commission's regulations, an order or decision of a hearing officer shall be final and to the same effect as an order or decision of the Environmental Management Commission. Appeal from a final order or decision of a hearing officer shall be as provided in G.S. 143-215.5. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23; 1977, c. 374, s. 1; c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Department" and "Environmental Management Commission" for "Board" and "Environmental Management Commission's" for "Board's" throughout the section. The amendment also substituted "the official acts of the Commission" for "its official acts" in the second sentence of subsection (a), substituted "the Commission's" for "its" in the last sentence of subsection (b), substituted "designated" for "appointed" in the first sentence of subdivision (d)(3) and substituted "Secretary" for "director or assistant director" in the second sentence of subdivision (d)(10).

The first 1977 amendment substituted "Attorney General in the manner provided by Chapter 150A of the General Statutes" for "Secretary of State" at the end of the second sentence of subsection (b).

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subsection (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Quoted in State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

§ 143-215.5. Judicial review. — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.4(d) shall be entitled to a review of the order or decision by the full Environmental Management Commission upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Environmental Management Commission shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Environmental Management Commission, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Environmental Management Commission shall constitute the full Environmental Management Commission on review.

(b) Any person against whom a final order or decision of the Environmental Management Commission is entered pursuant to hearing conducted by the Environmental Management Commission under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Environmental Management Commission to whom such authority has been duly delegated, may appeal from the order or decision of the Environmental Management Commission within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court

of Wake County or of the county where the order or decision is effective. Upon such appeal the Department shall send a transcript certified by the Environmental Management Commission of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Environmental Management Commission to the Court of Appeals.

(1) Upon appeal filed by any party, the Department shall forthwith furnish each party to the proceeding with a copy of a certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11; c. 1262, s. 23.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, substituted "Department shall send a transcript certified by the Environmental Management Commission" for "Board shall send a certified transcript" in the second sentence of subsection (b), substituted "Department" for "Board" in two places in subdivision (1) of subsection (b) and substituted "Enviromental Management Commission" for "Board" throughout the rest of the section.

§ 143-215.6. Enforcement procedures. — (a) Civil Penalties. —

(1) A civil penalty of not more than five thousand dollars ($5,000) may be assessed by the Environmental Management Commission against any person who:

a. Violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or 143-215.

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article.

e. Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars ($5,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider

the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) The Environmental Management Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Environmental Management Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.

(b) Criminal Penalties. —

(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Environmental Management Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or regulations of the Environmental Management Commission implementing this Article, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or regulations of the Environmental Management Commission implementing this Article, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any

responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. — Whenever the Department of Natural Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission's" for "Board's" in subdivision (3) of subsection (a) and "Environmental Management Commission" for "Board" throughout the section.

The first 1975 amendment substituted "continuous" for "willful" in subdivision (2) of subsection (a).

The second 1975 amendment redesignated former subdivision (a)(3) as present subdivision (a)(4), added present subdivision (a)(3) and substituted the language beginning "fifteen thousand dollars" and ending "which a violation continues" for "twenty-five thousand dollars ($25,000) per day of violation" near the end of subdivision (b)(1).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (a)(4) and in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Section 143-315, referred to in subdivision (4) of subsection (a), was repealed by Session Laws 1973, c. 1331, s. 2, originally effective July 1, 1975, but postponed until Feb. 1, 1976, by Session Laws 1975, c. 69, s. 4. After Feb. 1, 1976, for provisions as to the scope of the court's review, see § 150A-51.

§ 143-215.8A. Planning. — (a) Policy, Purpose and Intent. — The Environmental Management Commission and Department of Natural Resources and Community Development shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development, and to insure the beneficial use of the water resources of the State.

(b) Goals. — The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through

development by the Environmental Management Commission of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and Regional Planning. — The planning process may be conducted on a statewide or regional basis, as the Environmental Management Commission shall determine appropriate. If the Environmental Management Commission elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other manner that the extent and limits of each region shall be easily ascertainable. The Environmental Management Commission shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local Planning Organizations. — The Environmental Management Commission shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Environmental Management Commission shall consult with, advise, and assist any organization so designated in the preparation of its plans and shall submit to the Governor the Environmental Management Commission's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate Planning Regions. — The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.

(f) The Environmental Management Commission shall establish procedures for the development, revision and modification of plans under this section through adoption of appropriate rules and regulations. The rules and regulations of the Environmental Management Commission shall establish procedures for public hearing on all plans prior to their adoption, modification or revision, and upon adoption, they shall become the official water quality management plans of the State. (1973, c. 698, s. 13; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission's" for "Board's" in subsection (d) and "Environmental Management Commission" for "Board" throughout the section.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.9. Restrictions on authority of the Environmental Management Commission. — Nothing in this Article shall be construed to:

(1) Grant to the Environmental Management Commission any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subdivision (1).

As subdivisions (2) and (3) were not changed by the amendment, they are not set out.

§ 143-215.10: Repealed by Session Laws 1973, c. 1262, s. 23, effective July 1, 1974.

Part 2. Regulation of Use of Water Resources.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.13. Declaration of capacity use areas. — (a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.

(b) Within the meaning of this Part "a capacity use area" is one where the Environmental Management Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(c) The Environmental Management Commission may declare and delineate capacity use areas in accordance with the following procedures:

(1) Whenever the Environmental Management Commission believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Environmental Management Commission thereon.

(2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under the Stream Sanitation Law and the criteria for such classifications. Following its investigation the Department shall render a written report to the Environmental Management Commission. This report shall include the Department's findings and recommendations as to whether the water use problems of the area involve surface waters, groundwaters or both; whether effective measures can be employed limited to surface water or to groundwater; and whether timely action by any agency or person may preclude the need for additional

regulation at that time. The report shall also include such other findings and recommendations as the Department deems appropriate, including recommended boundaries for any capacity use area that may be proposed.

(3) If the Environmental Management Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt an order declaring said capacity use area. Prior to adopting such an order the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to such proposed action.

(4) Such notice shall be given not less than 30 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Environmental Management Commission proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication the notice shall specify that copies of such detailed proposed action shall be obtained on request from the Department of Natural Resources and Community Development in sufficient quantity to satisfy the requests of all interested persons.

(5) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural Resources and Community Development pursuant to the provisions of G.S. 143-215.15.

(6) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Environmental Management Commission on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.

(7) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action by the Environmental Management Commission pursuant to this paragraph, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this Part, including notice and hearing. If the Environmental Management Commission finds and orders that a capacity use area shall be declared, its order shall include a delineation of the boundary of said area, and the Department of Natural Resources and Community Development shall instruct the Secretary of the Department to prepare proposed regulations consistent with the provisions of this Part and commensurate with the degree of control

needed from among the classes of permissible regulations set forth in G.S. 143-215.14.

(d) The Environmental Management Commission may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Environmental Management Commission determines, pursuant to hearing, that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Environmental Management Commission may issue an order:

(1) Prohibiting any person withdrawing waters in excess of 100,000 gallons per day from increasing the amount of the withdrawal above such limit as may be established in the order.

(2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the order; but such prohibition shall not extend to any new well or facility having a capacity of less than 10,000 gallons per day.

(3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the order.

(4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the order.

(5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the order.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Environmental Management Commission that the generalized condition of water depletion or water pollution within the area has ceased.

Notice setting forth the time, place and purpose of the hearing and a description by geographical or political boundaries of the area affected shall be given:

(1) By publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing;

(2) By mailing copies of the notice by registered or certified mail at least 20 days in advance of hearing to the governing body of every county, city, town, and affected political subdivision lying in whole or in part within the area and to every affected or interested State and federal agency; and

(3) By posting a copy of the notice at the courthouse in every county lying, in whole or in part, within the area.

The Environmental Management Commission is also authorized, in the exercise of its discretion, to mail copies of notice by first-class mail to any person who it believes will or may be interested in or affected by the hearing.

Upon issuance of any order by the Environmental Management Commission pursuant to this subsection, a certified copy of such order shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the order shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the order shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such order after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

Any person who is adversely affected by an order of the Environmental Management Commission issued pursuant to this subsection may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal. (1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, deleted "the office of" following "request from" in the second sentence of subdivision (4) of subsection (c), substituted "Department of Natural and Economical Resources" for "Board" in three places in subsection (c), substituted "Secretary" for "Director" in the last sentence of subdivision (7) of subsection (c) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (4), (5), and (7) of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.14. Regulations within capacity use areas; scope and procedures. — (a) Following the declaration of a capacity use area by the Environmental Management Commission, it shall prepare proposed regulations to be applied in said area, containing such of the following provisions as the Environmental Management Commission finds appropriate concerning the use of surface waters or groundwaters or both:

(1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.

(2) With respect to surface waters, groundwaters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.

(3) With respect to groundwaters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.

(4) Such other provisions not inconsistent with this Part as the Environmental Management Commission finds necessary to implement the purposes of this Part.

(b) The Environmental Management Commission shall conduct one or more hearings upon the proposed regulations, upon notice, in accordance with the requirements of subdivisions (4)-(6) of G.S. 143-215.13(c). Upon completion of the hearings and consideration of submitted evidence and arguments with respect

to any proposed regulation, the Environmental Management Commission shall adopt its final action with respect thereto, and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modifications or revocations, however, to be subject to the procedural requirements of this Part, including notice and hearing. (1967, c. 933, s. 4; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

§ 143-215.15. Permits for water use within capacity use areas — procedures. — (a) In areas declared by the Environmental Management Commission to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Environmental Management Commission may designate) withdraw, obtain, or utilize surface waters or groundwaters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Environmental Management Commission.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Environmental Management Commission without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Environmental Management Commission shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Department of Natural Resources and Community Development shall notify each person required by this Part to secure a permit of the Environmental Management Commission's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. The Environmental Management Commission shall have the power: (i) to grant such permit with conditions as the Environmental Management Commission deems necessary to implement the regulations adopted pursuant to G.S. 143-215.14; (ii) to grant any temporary permit for such period of time as the Environmental Management Commission shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Environmental Management Commission's regulations applicable to such capacity use area; (iii) to modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) to deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In any proceeding pursuant to this section or G.S. 143-215.16 the Environmental Management Commission shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-215.13 or 143-215.14 the Environmental Management Commission shall give notice as provided by these sections, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department of Natural

Resources and Community Development to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department of Natural Resources and Community Development ask to be permanently recorded on such mailing list.

(e) All notices which are required to be given by the Environmental Management Commission or the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Environmental Management Commission or the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.

(f) The following provisions shall be applicable in connection with hearings pursuant to this Part:

(1) Any hearing held pursuant to this section or G.S. 143-215.16, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Environmental Management Commission to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings under this Part shall be before the Environmental Management Commission, or before one or more of its own members or before one or more qualified employees of the Department, and shall be open to the public. Any member of the Commission or employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.

(3) A full and complete record of all proceedings at any hearing under this Part shall be taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department of Natural Resources and Community Development.

(4) The Environmental Management Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) The Environmental Management Commission, or the duly authorized agent of such Environmental Management Commission, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

(6) Subpoenas issued by the Environmental Management Commission, in connection with any hearing under this Part shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Environmental Management Commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(7) The burden of proof at any hearing under this Part shall be upon the

person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.

(8) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Environmental Management Commission shall afford the parties thereto a reasonable opportunity to submit within 30 days or within such additional time as prescribed by the Environmental Management Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.

(10) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission, is based.

(11) The Department of Natural Resources and Community Development shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department of Natural Resources and Community Development and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(g) Any person against whom any final order or decision has been made except where no appeal is allowed as provided by G.S. 143-215.2(j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Department of Natural Resources and Community Development shall send a certified transcript of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the appellate division. No bond shall be required of the Environmental Management Commission to the appellate division.

(1) Upon appeal filed by any party, the Department of Natural Resources and Community Development shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge

shall be paid the Department of Natural Resources and Community Development for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript.

(h) In adopting any regulations pursuant to the provisions of G.S. 143-215.14, and in considering permit applications, revocations or modifications under this section, the Environmental Management Commission shall consider:

(1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;

(2) The nature and size of the stream or aquifer;

(3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);

(4) The probable severity and duration of such impairment under foreseeable conditions;

(5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;

(6) The kinds of businesses or activities to which the various uses are related;

(7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);

(8) Diversion from or reduction of flows in other watercourses or aquifers; and

(9) Any other relevant factors. (1967, c. 933, s. 5; 1973, c. 108, s. 89; c. 698, s. 15; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" and "Department of Natural and Economic Resources" for "Board" throughout the section and made other changes in conformity with the reorganization of the Department of Natural and Economic Resources by Session Laws 1973, c. 1262.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsections (c) and (d), subdivisions (2), (3) and (11) of subsection (f), and in the introductory paragraph and subdivision (1) of subsection (g).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties. — (a) No permit under G.S. 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use area, or (iii) the period found by the Environmental Management Commission to be necessary for reasonable amortization of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.

(b) Permits shall not be transferred except with the approval of the Environmental Management Commission.

(c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Environmental Management Commission in the manner prescribed by the Environmental Management Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Department of Natural Resources and Community Development within 90 days after the adoption of

an order by the Environmental Management Commission declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the Environmental Management Commission, the Environmental Management Commission shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Environmental Management Commission. In determining the amount of water being withdrawn or used by a permit holder or applicant the Environmental Management Commission may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(e) In any case where a permit applicant can prove to the Environmental Management Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Enviromental Management Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Environmental Management Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(f) The Environmental Management Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Environmental Management Commission within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board" near the middle of the second sentence of subsection (c) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsections (g) and (h) were not changed by the amendments, they are not set out.

§ 143-215.17. Enforcement procedures. — (a) Criminal Penalties. — Any person who shall be adjudged to have violated any provision of this Part shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. —

(1) The Environmental Management Commission may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates any duly adopted regulations of the Commission implementing the provisions of this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Commission may assess a penalty not to exceed two hundred fifty dollars ($250.00) per day for each day of violation.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment) shall be as provided in G.S. 150A-51.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same. (1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23; 1975, c. 842, s. 2; 1977, c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" near the beginning of subsection (b).

The 1975 amendment substituted "Criminal Penalties" for "Penalties for Violations" at the beginning of subsection (a), rewrote subsection (b) and added subsection (c), which is similar to subsection (b) as it was before the amendment.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (b)(4) and in two places in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.18. Map or description of boundaries of capacity use areas. — (a) The Environmental Management Commission in designating and the Department in recommending the boundaries of any capacity use area may define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Secretary of Natural Resources and Community Development. Photographic, typed or other copies of such map or description, certified by the Secretary of Natural Resources and Community Development, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are changed pursuant to other provisions of this Part, the Department may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

(b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Environmental Management Commission; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries. The filings required by this subsection shall constitute compliance with the requirements of Article 18 of Chapter 143 of the General Statutes. (1967, c. 933, s. 8; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsections (a) and (b) and substituted "Secretary of Natural and Economic Resources" for "Director of the Department" and for "Director" in subsection (a).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second and third sentences of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.19. Rights of investigation, entry, access and inspection. — The Environmental Management Commission shall have the right to direct the conduct of such investigations as may reasonably be necessary to carry out its duties prescribed in this Part, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, withdrawal or use of any waters, investigating water sources, or investigating the installation or operation of any well or surface water withdrawal or use facility, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well or surface water withdrawal or use facility; provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Environmental Management Commission or Department who requests entry for purposes of a lawful inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this Part. (1967, c. 933, s. 9; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and "direct the conduct of" for

"conduct" near the beginning of the first sentence and substituted "Environmental Management Commission or Department" for "Board" near the beginning of the second sentence.

§ 143-215.20. Rules and regulations. — The Environmental Management Commission may adopt and modify from time to time rules and regulations consistent with the provisions of this Part to implement the provisions of this Part. All such rules and regulations, and modifications thereof, shall be filed with the Attorney General as required by Chapter 150A of the General Statutes. (1967, c. 933, s. 10; 1973, c. 1262, s. 23; 1975, 2nd Sess., c. 983, s. 72.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board."

The 1975, 2nd Sess., amendment substituted, in the second sentence, "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by Article 18 of Chapter 143 of the General Statutes."

§ 143-215.21. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(1) "Area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.

(2) "Commission" means the Environmental Management Commission, or its successor.

(4) "Department" means the Department of Natural Resources and Community Development or its successor.

(5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Environmental Management Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subdivision (1) and in clause (iii) of subdivision (5) and rewrote subdivisions (2), which formerly defined "Board" as the Board of Water Resources or its successor, and (4), which formerly defined "Department" as the Department of Water Resources or its successor.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1), (2), (4) and (5) are set out.

Part 3. Dam Safety Law.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.24. Declaration of purpose. — It is the purpose of this Part to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to property and loss of reservoir storage; and to ensure maintenance of minimum stream flows below such dams of adequate quantity and quality. (1967, c. 1068, s. 2; 1977, c. 878, s. 1.)

Editor's Note. — The 1977 amendment deleted "certain" preceding "dams" near the beginning of the section and "such" preceding "dams" near the end of the section and inserted "minimum" near the end of the section.

§ 143-215.25. Definitions. — As used in this Part, unless the context otherwise requires:

(1) "Commission" means the Environmental Management Commission.

(2) "Dam" means the dam (and appurtenant works) for the impoundment or diversion of water, except that it shall not include:

a. Any dam constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or any other department or agency of the United States government, when such department or agency designed or approved plans and supervised construction.

b. Any dam or flood retarding structure constructed with financial assistance from the United States Soil Conservation Service, when said agency designed or approved plans and supervised construction.

c. The exemptions conferred by items a and b of this subdivision shall cease when the supervising federal agency relinquishes authority for the operation and maintenance to a local entity.

d. Any dam licensed by the Federal Power Commission, or for which a license application is pending with the Federal Power Commission, or for use in connection with electric generating facilities to be constructed pursuant to a certificate of public convenience and necessity from the North Carolina Utilities Commission.

e. Any dam under a single private ownership, providing protection only to land or other property under such ownership, and posing no threat to life or property below the property under such single ownership.

f. Any dam less than 15 feet in height (measured from original stream bottom to crest of dam) or whose impoundment capacity is less than 10 acre-feet.

(3) "Department" means the North Carolina Department of Natural Resources and Community Development.

(4) "Minimum stream flows" or "minimum flows" means stream flows of a quantity and quality sufficient in the judgment of the Department

to meet and maintain stream classifications and water quality standards established by the Department of Natural Resources and Community Development under G.S. 143-214.1 and applicable to the waters affected by the project under consideration. In order to ensure that such classifications and standards shall be met and maintained, the Department may impose such conditions and requirements in orders and written approvals issued under this Part as, in its judgment, may be necessary to this end, including conditions and requirements relating to the release or discharge of designated flows from impoundments, the location or design of water outlets for impoundments and of water intakes, the amount and timing of withdrawal of water from a reservoir, and the construction of submerged weirs or other devices designed to satisfy minimum stream flow requirements.

(1973, c. 1262, ss. 23, 38; 1977, c. 771, s. 4; c. 878, ss. 2, 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote subdivisions (1), which formerly defined "Board" as the North Carolina Board of Water Resources, and (3) which formerly defined "Department" as the North Carolina Department of Water Resources. The amendment also substituted "Department of Natural and Economic Resources" for "State Stream Sanitation Committee" in subdivision (4).

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (3) and (4).

The second 1977 amendment deleted "or any dam costing less than five thousand dollars ($5,000)" at the end of subdivision (2)f and substituted "G.S. 143-214.1" for "the North Carolina Stream Sanitation Law" near the beginning of subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments only the introductory language and subdivisions (1), (2), (3) and (4) are set out.

§ 143-215.26. Construction of dams.

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the Department of Human Resources, the Wildlife Resources Commission, the Board of Transportation, and such other State and local agencies as it deems appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23.)

Editor's Note. —

The third 1973 amendment, effective July 1, 1974, deleted "the Department of Conservation and Development" following "Wildlife Resources Commission," in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 143-215.28. Action by Environmental Management Commission upon applications. — (a) Following receipt of agency comments the Environmental Management Commission shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this Part.

(c) If the Environmental Management Commission disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Environmental Management Commission deems necessary to safeguard life and property.

(d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Environmental Management Commission upon written application and good cause shown may

extend the time for commencing construction. Notice by registered mail shall be given the Environmental Management Commission at least 10 days before construction is commenced. (1967, c. 1068, s. 6; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsections (a), (c) and (d). As subsection (b) was not changed by the amendment, it is not set out.

§ 143-215.29. Supervision by qualified engineers; reports and modification during work. — (a) Any project for which the Environmental Management Commission's approval is required under G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.

(b) During the construction, enlargement, repair, alteration or removal of a dam, the Environmental Management Commission may require such progress reports from the supervising engineer as it deems necessary.

(c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Environmental Management Commission finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Environmental Management Commission may order that no further construction work be undertaken until such compliance has been effected and approved by the Environmental Management Commission. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this section. (1967, c. 1068, s. 7; 1973, c. 1262, s. 23; 1977, c. 878, s. 5.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission's" for "Board's" in subsection (a) and "Environmental Management Commission" for "Board" throughout subsections (b) and (c).

The 1977 amendment substituted "G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32" for "G.S. 215.26 and 143-215.27" in subsection (a).

§ 143-215.30. Notice of completion; certification of final approval. — (a) Immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Environmental Management Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Environmental Management Commission may require.

(b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

(c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum stream-flow requirements, they shall file with the Department a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Environmental Management Commission has reason to believe that the dam is unsafe or is not in compliance with any applicable requirement, regulation, or law, the Environmental Management Commission shall grant final approval of

the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(d) Pending issuance of the Environmental Management Commission's final approval, the dam shall not be used except on written consent of the Environmental Management Commission, subject to conditions it may impose. (1967, c. 1068, s. 8; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in the second sentence of subsection (a) and in the first sentence of subsection (c) and substituted "Environmental Management Commission" for "Board" and "Environmental Management Commission's" for "Board's" throughout the rest of the section.

§ 143-215.31. Supervision over maintenance and operation of dams. — The Environmental Management Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum stream-flow requirements. The Environmental Management Commission is hereby authorized to adopt such standards for maintenance and operation of dams as may be necessary for the purposes of this Part. In its discretion the Environmental Management Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in three places.

§ 143-215.32. Inspection of dams. — (a) The Department is hereby authorized at any time to inspect any dam upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, or is not maintained in good repair or operating condition, or is dangerous to life or property, or does not satisfy minimum stream-flow requirements, the Department shall cause such evidence to be presented to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) For the purposes of this section the word "dam" shall mean any dam posing a present threat to human life or property regardless of its size and

impoundment capacity, but excepting those dams described in G.S. 143-215.25(2)a, b and d. (1967, c. 1068, s. 10; 1973, c. 1262, s. 23; 1977, c. 878, s. 3.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote the first sentence of subsection (a), substituted "Department" for "Board" in the second sentence of subsection (a), rewrote subsection (b) and substituted "Environmental Management Commission" for "Board" in three places in subsection (c).

The 1977 amendment added subsection (d).

§ 143-215.33. Judicial review. — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.23 et seq., shall be entitled to a review of the order or decision by the full Commission upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Commission shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Commission, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Commission shall constitute the full Commission on review.

(b) If an applicant under this Part, or owner of a dam which is the subject of an application, or any landowner whose property would be endangered by failure of a dam, are dissatisfied with any final order or decision of the Environmental Management Commission issued under this Part, he (or they, as the case may be) shall have a right of appeal to the superior court pursuant to the provisions of Article 4 of Chapter 150A of the General Statutes. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975, c. 842, s. 4; 1977, c. 878, s. 6.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board."

The 1975 amendment designated the existing section as subsection (b) and added subsection (a).

The 1977 amendment substituted "Article 4 of Chapter 150A" for "Article 33 of Chapter 143" near the end of subsection (b).

§ 143-215.34. Investigations by Department; rules and regulations; employment of consultants. — The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and for such purposes may enter upon private property. The Environmental Management Commission may adopt such rules and regulations as may be necessary to carry out the purposes of this Part. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this Part. (1967, c. 1068, s. 12; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in the second sentence and "Department" for "Board" in the third sentence.

§ 143-215.35. Liability for damages. — No action shall be brought against the State of North Carolina, the Department, or the Environmental Management Commission or any agent of the Commission or any employee of the State or the Department for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this Part. Nothing in this Part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote the first sentence.

§ 143-215.36. Enforcement procedures. — (a) Criminal Penalties. — Any person who shall be adjudged to have violated this Article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. —

(1) The Environmental Management Commission may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates any duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Commission may assess a penalty not to exceed two hundred fifty dollars ($250.00) per day for each day of violation.

(3) In determining the amount of the penalty, the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment) shall be as provided in G.S. 150A-51.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the

same. (1967, c. 1068, s. 14; 1973, c. 1262, s. 23; 1975, c. 842, s. 3; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Commission" for "Department" near the beginning of subsection (b) and "Secretary" for "Director" in two places in subsection (b).

The 1975 amendment substituted "Criminal Penalties" for "Penalties for Violations" at the beginning of subsection (a), added present subsection (b), redesignated former subsection (b) as present subsection (c) and rewrote that subsection.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (b)(4) and in two places in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.37. Rights of investigation, entry, access, and inspection. — The Commission shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this Part, and the Department shall have the right to conduct such investigations, and for this purpose the employees of the Department and agents of the Commission have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote the part of the first sentence preceding the proviso and substituted "Commission or Department" for "Board" in the second sentence.

Part 4. Federal Water Resources Development Projects.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.40. Resolutions and ordinances assuring local cooperation. — (a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor and the Advisory Budget Commission, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the

fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Natural Resources and Community Development for the information of the Governor.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" and "Secretary of Natural and Economic Resources" for "Director of the Department of Water and Air Resources" in subsection (a).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsection (b) was not changed by the amendments, it is not set out.

§ 143-215.41. Items of cooperation to which localities and the State may bind themselves. — Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, or the State of North Carolina, acting through the Environmental Management Commission, to the following when included as requirements of local cooperation for a federal water resources development project:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;

(2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;

(3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;

(4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;

(5) To accomplish, without cost to the United States, such alterations, if any, as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;

(6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the concurrence and under the direction of the Board of Transportation, highway or highway bridge construction and alterations necessary for project construction;

(7) To adjust all claims concerning water rights;

(8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;

(9) To provide a cash contribution for project costs assigned to project features other than flood control;

(10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;

(11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Environmental Management Commission in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968; 1973, c. 507, s. 5; c. 1262, s. 23; c. 1446, s. 14.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in two places.

The third 1973 amendment substituted "or" for "of" following "local unit" near the beginning of the introductory paragraph.

§ 143-215.42. Acquisition of lands. — (a) For the purpose of complying with the terms of local cooperation as specified in Chapter 143, Article 21, Part 4, and as stipulated in the congressional document covering the particular project involved, any county, municipality, other local government unit or the State of North Carolina, acting on behalf of the Environmental Management Commission, may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted to counties, municipalities and other local government units may be exercised only after:

(1) The municipality, county or other local unit makes application to the Environmental Management Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Environmental Management Commission finds that the land is sought to be acquired for a proper purpose within the intent of Chapter 143, Article 21, Part 4. The findings of the Environmental Management Commission will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(c) The Department of Natural Resources and Community Development shall certify copies of the Commission's findings to the applicant municipality, county, or other local unit, and to the clerk of superior court of the county or counties wherein any of the land sought to be condemned lies for recordation in the special proceedings thereof.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purpose as the condemning authority deems best. If the local government unit so determines, such lands may be sold, leased, or rented, subject to the prior approval of the Environmental Management Commission. The State may sell, lease or rent any lands acquired by it, and if the Environmental Management Commission is participating with any local

government unit or units in a water resources project under this Article, may convey such lands or interests to the unit or units as a part of its participation therein.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" and "the Commission's" for "its" in subsection (c) and substituted "Environmental Management Commission" for "Board of Water and Air Resources" in subsections (a), (b) and (f).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsections (a), (b), (c) and (f) are set out.

Part 5. Right of Withdrawal of Impounded Water.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.48. Determining streamflows. — (a) In litigation in which the rate of flow of water that would exist in the absence of an impoundment is in issue, that rate shall be deemed to be the minimum average flow for a period of seven consecutive days that have an average recurrence of once in 10 years unless a party to the litigation introduces a calculation that more closely approximates the actual rate. A determination made by the Environmental Management Commission (i) of either that minimum average flow, or (ii) that adopts a calculation that more closely approximates the actual rate of flow, and introduced by one of the parties to the litigation, shall be prima facie correct.

(b) The Environmental Management Commission is authorized to make the determinations specified in subsection (a) of this section and to require the submission of such reports and such inspections as are necessary to permit those determinations. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in subsections (a) and (b) and deleted "make" preceding "such inspections" near the end of subsection (b).

§ 143-215.50. Interpretation with other statutes. — Whether rights of withdrawal shall have effect in a capacity use area declared by the Environmental Management Commission under the Water Use Act of 1967 shall be in the discretion of the Environmental Management Commission. This Part shall be subject to the provisions of the Water and Air Resources Act, and the Dam Safety Law of 1967. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" and for "Board."

Part 6. Floodway Regulation.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.56. Delineation of floodway; powers of Environmental Management Commission and Department of Natural Resources and Community Development; powers of local governments. — (a) For the purpose of delineating the floodway and evaluating the possibility of flood damages, responsible local governments are empowered to:

(1) Request technical assistance from the competent federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Tennessee Valley Authority, and the U.S. Geological Survey, or successor agencies, and

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department of Natural Resources and Community Development shall be empowered to render advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. In the exercise of its powers to adopt rules and regulations interpreting and applying the provisions of this Part, the Environmental Management Commission may adopt (but is not limited to adopting) regulations interpreting any of the terms used in this Part, including regulations supplementing the definitions provided in this Part. A copy of every regulation adopted by the Environmental Management Commission interpreting or applying the provisions of this Part, shall be filed by the Department of Natural Resources and Community Development with the chairman of the governing body of each county and municipality within the State, as well as with the Attorney General as required by Chapter 150A of the General Statutes.

(c) A local government may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. The Environmental Management Commission may delineate a floodway, in the same manner and subject to the same requirement, when the reach of a stream in which a floodway is determined by the Environmental Management Commission to be needed exceeds the jurisdiction of a single local government. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government or the Environmental Management Commission may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) If the Environmental Management Commission determines that the floodway of any stream or stream segment should be delineated and the use thereof controlled as provided in this Part, and the local governments within which the stream or segment lies have not delineated the floodway or controlled uses therein, the Environmental Management Commission shall advise the local governments of its intent to delineate the floodway, and it shall be the responsibility of the local governments to control uses therein. At least 30 days prior to the effective date specified in the resolution of the Environmental Management Commission establishing any floodway, notice of the effective date and copies of such rules and regulations shall be delivered to every affected local government along with copies of all maps and plans delineating the floodway. Public notice of the resolution shall be given at least 30 days prior to the effective date by publication of a notice once a week for two successive weeks in a newspaper or newspapers having general circulation in the county or counties in which each affected local government lies and by posting a copy of the notice at the courthouse of each such county, along with a sketch map showing the stream or stream segment affected. The notice shall be adequate to apprise all interested persons of the nature of the rules and regulations, the effective date thereof, the stream or stream segment affected, and the manner in which more detailed information may be secured. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7; c. 1262, s. 23; 1977, c. 374, s. 2; c. 771, s. 4.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" in the first sentence of subsection (b) and for "Board" in the last sentence of subsection (b) and substituted "Environmental Management Commission" for "Board of Water and Air Resources" and for "Board" throughout the rest of the section.

The first 1977 amendment substituted "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by G.S. 143-195" at the end of subsection (b).

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last sentences of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.62. Revolving fund established; conditions and procedures. — (a) There is established under the control and direction of the North Carolina Department of Natural Resources and Community Development a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source for the purpose of financing the local portion of the nonfederal share of the cost of hurricane flood protection and beach erosion control projects. The Department of Natural Resources and Community Development shall, when funds are available, and in accordance with priorities established by the Environmental

Management Commission, make advances from the fund to any county or municipality for:

(1) Advance planning and engineering work necessary or desirable in order to promote the development, construction, or preservation of hurricane flood protection and beach erosion works or projects;

(2) Construction of hurricane flood protection and beach erosion control works or projects, or other related costs which are a responsibility of local government, including costs associated with construction, such as the acquisition of land or rights-of-way or the relocation of public roads and utilities;

(3) Maintenance and nourishment of the constructed works or project.

Such advances shall be subject to repayment by the recipient to the Department of Natural Resources and Community Development from the proceeds of bonds or other obligations for the beach erosion control and hurricane flood protection works or projects, or from other funds available to the recipient, including grants.

(b) Prior to making any advance to a county or municipal government the Environmental Management Commission shall advise the county or municipal government:

(1) Its opinion as to whether or not the projected works or project would further beach erosion control or provide protection to life or property from floodwaters resulting from hurricanes;

(2) Its opinion as to whether or not there is a reasonable prospect of federal aid in the financing of the projected works or project and whether or not the advance will exceed the local portion of the nonfederal share of the cost of the works or project to be financed by the county or municipality making the application;

(3) Its opinion as to whether or not the anticipated financial outlays in connection with the projected works or project for the county or municipality making the application would constitute an unreasonable burden on the citizens of the county or municipality.

The Environmental Management Commission shall authorize no advance to a county or municipal government without first receiving satisfactory assurances from such government that the projected works or project shall be undertaken and the funds advanced repaid as provided herein.

(c) Repayment of any advance may be in equal installments or in a lump sum, but the term for such repayment shall not exceed a term of 10 years. All moneys received from repayments on advances shall be paid into the revolving fund and shall be used for the purposes set forth in this section.

(d) The Environmental Management Commission may adopt such rules and regulations with respect to making application as are consistent with the terms and purposes of this section. (1971, c. 1159, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Water and Air Resources" in the first sentence and for "Board" near the beginning of the second sentence of the introductory paragraph of subsection (a), substituted "Department of Natural and Economic Resources" for "Board" in the last sentence of subsection (a), substituted "authorize" for "make" in the last sentence of subsection (b) and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The 1977 amendment, in subsection (a), substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and second sentences of the introductory paragraph and in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 7. Water and Air Quality Reporting.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.64. Purpose. — The purpose of this Part is to require all persons who are subject to the provisions of G.S. 143-215.1 to file reports with the Environmental Management Commission covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources."

§ 143-215.65. Reports required. — All persons subject to the provisions of G.S. 143-215.1 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file at such frequencies as the Commission may specify and at least quarterly reports with the Environmental Management Commission setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Environmental Management Commission in its official regulations. Such reports shall be filed on forms provided by the Department and approved by the Environmental Management Commission and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Environmental Management Commission in its official regulations. The information shall be used by the Environmental Management Commission only for the purpose of air and water pollution control. The Department shall provide proper and adequate facilities and procedures and the Commission shall adopt adequate regulations to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 655, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, deleted "either" following "on forms" and substituted "the Department and" for "or" in the second sentence, rewrote the last sentence, and substituted "Environmental Management Commission" for "Board" throughout the rest of the section.

The 1975 amendment substituted "at such frequencies as the Commission may specify and at least quarterly reports" for "monthly reports" near the beginning of the first sentence.

§ 143-215.66. Monitoring required. — In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality of the environment, all persons subject to the provisions of G.S. 143-215.1 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Environmental Management Commission. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as shall be reasonably required by the Environmental Management Commission, in its official regulations, for evaluating the efficiency of treatment facilities or air-cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in two places.

§ 143-215.68. Rules and regulations. — The Environmental Management Commission is hereby specifically authorized to adopt appropriate report forms and such rules and regulations as deemed necessary for the implementation of this Part. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board."

§ 143-215.69. Enforcement procedures. — (a) Criminal Penalties. — Any person who violates any provisions of this Part or any regulations adopted by the Environmental Management Commission for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Environmental Management Commission shall constitute a separate offense subject to the foregoing penalty.

(b) Civil Penalties. — The Environmental Management Commission may assess civil penalties as provided in G.S. 143-215.6 and 143-215.114.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same.

(d) Judicial Review. — Appeal from a final order or decision of a hearing officer or the Commission shall be as provided in G.S. 143-215.5. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 842, s. 5; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in two places.

The 1975 amendment designated the existing provisions as subsection (a), added "Criminal Penalties" at the beginning of that subsection and added subsections (b) through (d).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in the first sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 21A.

Oil Pollution Control.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

Part 1. General Provisions.

§ 143-215.77. Definitions. — As used in this Article, unless the context otherwise requires:

(2) "Environmental Management Commission" shall mean the North Carolina Environmental Management Commission.

(3) "Secretary" shall mean the North Carolina Secretary of Natural Resources and Community Development.

(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person on agricultural, horticultural, or forestry crops, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge.

(7) "Department" shall mean the Department of Natural Resources and Community Development.

(1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote subdivisions (2), which formerly defined "Board" as the North Carolina Board of Water and Air Resources, (3), which formerly defined "Director" as the North Carolina Director of Water and Air Resources, and (7), which formerly defined "Office" as the North Carolina Office of Water and Air Resources. The amendment also substituted "Environmental Management Commission" for "Board" in subdivision (4).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (3) and (7).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (2), (3), (4) and (7) are set out.

§ 143-215.78. Oil pollution control program. — The Department shall establish within the office an oil pollution control program for the administration of this Article. The Department may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in two places.

§ 143-215.79. Inspections and investigations; entry upon property. — The Environmental Management Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharge to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Environmental Management Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in two places.

§ 143-215.81. Authority supplemental. — The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the Environmental Management Commission under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the Environmental Management Commission is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in two places.

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges.

(b) Excepted Discharges. — This section shall not apply to discharges of oil in the following circumstances:

(1) When the discharge was authorized by an existing regulation of the Environmental Management Commission.

(2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:

a. An act of God.

b. An act of war or sabotage.

c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.

d. An act or omission of a third party, whether any such act or omission was or was not negligent.

e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

(c) Permits. — Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Environmental Management Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Environmental Management Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsections (b) and (c). As subsection (a) was not changed by the amendment, it is not set out.

§ 143-215.84. Removal of prohibited discharges. — (a) Person Discharging. — Any person having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Environmental Management Commission.

(b) Removal by Department. — Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary of Natural Resources and Community Development, to purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(d) The Secretary of the Department of Transportation and the Secretary of the Department of Natural Resources and Community Development or their designees shall prepare rules and regulations and develop procedures for the placement of these trucks and shall determine the manner and way in which they

are to be used. The Secretary of the Department of Natural Resources and Community Development shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88. (1973, c. 534, s. 1; c. 1262, s. 23; 1975, c. 885; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" at the end of subsection (a), substituted "Department" for "Board" in the catchline to subsection (b) and in the first sentence of the subsection, and substituted "Secretary" for "director" in the second sentence of subsection (b).

The 1975 amendment, effective July 1, 1975, added subsections (c) and (d).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in subsections (c) and (d).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.85. Required notice. — Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary of Natural Resources and Community Development or such member or members of the permanent staff of the Department as the Secretary may designate. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "director or assistant director of the Board" and "Secretary" for "director" in the second sentence.

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

The second 1977 amendment, effective July 1, 1977, substituted "Department" for "office" in three places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.86. Other State agencies. — (a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State shall cooperate with and lend assistance to the Environmental Management Commission by assigning to the Environmental Management Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, designated representatives of the Environmental Management Commission, the Board of Transportation, and the Wildlife Resources Commission and any other agency or agencies of the State which the Environmental Management Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts. — Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the

agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Environmental Management Commission upon completion of the project or activity. (1973, c. 507, s. 5; c. 534, s. 1; c. 1262, s. 23.)

Editor's Note.—
Session Laws 1973, c. 1262, s. 23, effective July 1, 1974, deleted "the North Carolina Department of Conservation and Development" following "Board of Transportation" near the beginning of subsection (a) and "the Department of Conservation and Development" following "Board of Transportation" near the beginning of subsection (b) and substituted "Environmental Management Commission" for "Board" throughout the section.

§ 143-215.87. Oil Pollution Protection Fund. — There is hereby established under the control and direction of the Department an Oil Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in three places.

§ 143-215.88. Payments to State agencies. — Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the Secretary shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil discharged to the land or waters of the State, unless the Environmental Management Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.83(b). Any person having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion,

in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 858, s. 2.)

Editor's Note.—
The 1973 amendment, effective July 1, 1974, substituted "Department" for "Board" in the first sentence, "Environmental Management Commission" for "Board" in the third sentence and "Secretary" for "director" in the second, third and last sentences.

The 1977 amendment, effective July 1, 1977, substituted "G.S. 143-215.83(b)" for "G.S. 143-215.84(b)" at the end of the third sentence.

§ 143-215.90. Liability for damage to public resources. — Any person who violates any of the provisions of this Article, or any order, rule or regulation of the Environmental Management Commission adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Environmental Management Commission made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Environmental Management Commission, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Environmental Management Commission in conference with the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any or all of such boards, commissions and agencies). Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the superior court of the county in which the damage occurred or in which the violator resides or has his or its principal place of business, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the damages occurred. Any money so recovered by the Attorney General shall be transferred by the Environmental Management Commission to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, deleted "the Board of Conservation and Development," preceding "the Wildlife Resources Commission" near the end of the first sentence and substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources" throughout the section.

§ 143-215.91. Penalties. — (a) Civil Penalties. — Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars ($5,000) for every such violation, the amount to be determined by the Environmental Management Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations

as the Environmental Management Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Environmental Management Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Environmental Management Commission may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Environmental Management Commission may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Environmental Management Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Environmental Management Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Environmental Management Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.
(1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in subsection (a). As subsection (b) was not changed by the amendment, it is not set out.

§ 143-215.92. Lien on vessel. — Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Environmental Management Commission in an amount and with sureties acceptable to the Environmental Management Commission, or a cash deposit is made with the Environmental Management Commission in an amount acceptable to the Environmental Management Commission. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Environmental Management Commission may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Environmental Management Commission deems necessary. (1973, c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

Part 3. Oil Terminal Facilities.

§ 143-215.94. Joint and several liability. — In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.88 through 143-215.91(a), 143-215.93 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or causing or contributing to the discharge of oil. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (1973, c. 534, s. 1; 1977, c. 858, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "G.S. 143-215.88 through 143-215.91(a), 143-215.93" for "G.S. 143-215.89 through 143-215.92(a), 143-215.94" in the first sentence.

§ 143-215.97. Recommendations; regulations.

(b) The Secretary of Natural Resources and Community Development may adopt and modify from time to time rules and regulations consistent with this Part to implement the provisions of this Part. All such rules and regulations and modifications thereof, shall be filed with the Attorney General as required by Chapter 150A of the General Statutes. (1973, c. 534, s. 1; 1975, 2nd Sess., c. 983, s. 82; 1977, c. 771, s. 4.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted, at the end of subsection (b), "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by Article 18 of Chapter 143 of the General Statutes."

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 143-215.99: Repealed by Session Laws 1975, c. 521, s. 1, effective July 1, 1975.

Part 4. Oil Refining Facility Permits.

§ 143-215.100. Oil refining facility permits. — No facility which is to be used or is capable of being used for the purpose of refining oil shall be initiated or constructed after July 1, 1975, without a permit from the Secretary of Natural Resources and Community Development. (1975, c. 521, s. 2; 1977, c. 771, s. 4.)

Editor's Note. — Session Laws 1975, c. 521, s. 3, makes the act effective July 1, 1975.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.101. Powers of the Secretary. — The Secretary, in addition to any other powers granted under the laws of this State, shall have the power:

(1) To adopt, modify and revoke rules and regulations relating to the issuance of oil refining facility permits. Such rules and regulations may include, but shall not be limited to, the following matters:

a. Requirements for submission of engineering reports, plans and specifications for the location and construction of oil terminal facilities.

b. Establishment of procedures and methods of reporting discharges and other occurrences prohibited by this Article.

c. Establishment of procedures, methods, means, and equipment to be used in the removal of oil pollutants.

(2) To deny the issuance of a permit upon a finding that:

a. The installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries; or

b. The operation of the installation will violate standards of air or water quality promulgated or administered by the Environmental Management Commission; or

c. The installation will have a substantial adverse effect on a publicly owned park, forest, or recreation area.

(3) To grant permits for the operation of existing or proposed oil refining facilities and to impose such terms and conditions therein as it shall deem necessary and appropriate to effectuate the purposes of this Article.

(4) To require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to prevent, insofar as possible, any oil discharges to the waters or lands of the State.

(5) To issue guidelines consistent with the Uniform Administrative Practices Act for the issuance or denial of permits. (1975, c. 521, s. 2.)

§ 143-215.102. Penalties. — (a) Civil Penalty. — Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for every such violation, the amount to be determined by the Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Article as well as G.S. 143-215.1, and such other considerations as the Commission deems appropriate. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Commission may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms, as it, in its discretion shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Commission may adopt. If the amount of such penalty is not paid to the Department of Natural and Economic Resources within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, the amount provided in the order issued by the Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator resides or does business, to recover the amount specified in the final order of the Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund as established by this Article.

(b) Criminal Penalties. — Any person who intentionally or knowingly or willfully violates any provision of this Part, or any rule, regulation or order made pursuant to this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars ($10,000), or both, in the discretion of the court. No proceeding

shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. (1975, c. 521, s. 2.)

§§ 143-215.103, 143-215.104: Reserved for future codification purposes.

ARTICLE 21B.

Air Pollution Control.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.105. Declaration of policy; definitions.

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.106. Administration of air quality program. — The air quality program of the State of North Carolina shall be administered by the Department of Natural Resources and Community Development under the rules, regulations and policies of the North Carolina Environmental Management Commission created pursuant to G.S. 143-214. The Environmental Management Commission shall review and have general oversight and supervision over the creation and administration of local air pollution control programs authorized by this Article. Public hearings on the adoption by the Environmental Management Commission of air quality standards, emission control standards, and classifications for air contaminant sources as well as any proposed revisions in such standards and classifications shall be conducted in accordance with the procedure set forth in subsections (e)(1), (e)(2) and (e)(3) of G.S. 143-214.1. (1973, c. 821, s. 6; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" in the first sentence and for "Board" in the second and third sentences.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.107. Air quality standards and classifications. — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal

agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Environmental Management Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Environmental Management Commission may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Environmental Management Commission requires reporting shall make reports containing such information as may be required by the Environmental Management Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt such emission control standards as in the judgment of the Environmental Management Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Environmental Management Commission.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(b) Criteria for Standards. — In developing air quality and emission control standards, the Environmental Management Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Proposed Adoption of Standards and Classifications. — Prior to the adoption by the Environmental Management Commission of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of G.S. 143-214.1.

(d) Final Adoption of Air Quality Standards, Emission Control Standards and Classifications for Air Contaminant Sources. — Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Environmental Management Commission with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforestated standards and classifications, the Environmental Management Commission shall likewise

publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.108 and G.S. 143-215.109 to persons within the State as a whole or within any designated area of the State.

(e) Environmental Management Commission's Powers to Modify or Revoke. — The Environmental Management Commission is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article and Article 21.

(f) In adopting air quality policies, rules, regulations and procedures, the Environmental Management Commission or any other State or local regulatory body shall be guided by the same standards, definitions, considerations and criteria set forth, from time to time, in federal law, rules or regulations for the guidance of federal, state or local agencies administering the Federal Clean Air Program.

It is the intent of the General Assembly that the air quality rules, regulations and procedures promulgated by the Environmental Management Commission or any other State or local regulatory body under the General Statutes of North Carolina shall be no more restrictive than those adopted by the United States Environmental Protection Agency. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section, and "Environmental Management Commission's" for "Board's" in the catchline to subsection (e).

The 1975 amendment added subsection (f).

Adoption of Air Quality Rules, Regulations and Procedures by Commission. — N.C.G.S. 143-215.107(f) does not prohibit the Environmental Management Commission from adopting air quality rules, regulations and procedures covering matters on which there are no corresponding EPA regulations. Opinion of Attorney General to Mr. Ronald L. Lindsay, 45 N.C.A.G. 170 (1975).

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.108. Control of sources of air pollution; permits required. — (a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any air contaminant source;

(2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

(4) Enter into a contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air of the State from any additional or enlarged sources.

The Environmental Management Commission shall have the power:

(1) To grant and renew a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this section;

(2) To grant and renew any temporary permit for such period of time as

the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing.

The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

Contravention, or likelihood of contravention, is condition precedent to necessity for permit from the Environmental Management Commission. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.109. Control of complex sources. — (a) The Environmental Management Commission shall develop and adopt regulations establishing criteria for controlling the effects of complex sources on air quality. The regulations shall set forth such basic minimum criteria or standards under which the Environmental Management Commission shall approve or disapprove any such construction or modification. The regulations shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Environmental Management Commission shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Environmental Management Commission shall have authority

to disapprove such construction or modification or to approve such construction or modification under such conditions as the Environmental Management Commission shall deem necessary or appropriate.

(c) In adopting the regulations required by this section and in applying such regulations to any complex source, the Environmental Management Commission may conduct such public hearings as it, in its sole discretion, shall deem appropriate, after such notice and pursuant to such procedures as the Environmental Management Commission shall establish in its rules of procedure. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

§ 143-215.110. Special orders. — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon the consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.111 and in any applicable rules of procedure of the Environmental Management Commission. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

(1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent

special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

§ 143-215.111. General powers of Environmental Management Commission; auxiliary powers. — In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

(1) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.

(2) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article and Article 21, rules and regulations adopted pursuant thereto, or any other provision of law.

(3) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in the introductory paragraph.

§ 143-215.112. Local air pollution control programs. — (a) The Environmental Management Commission is authorized and directed to review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 and any applicable standards and rules and regulations adopted pursuant thereto. The Environmental Management Commission shall certify any local program which:

(1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;

(2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;

(3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and

(4) Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Environmental Management Commission.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

(2) Subject to the approval of the Environmental Management Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

a. Establishing a program under the administration of the duly elected governing body of the county or municipality;

b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;

c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and

d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

(3) If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Environmental Management Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit

to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body shall constitute a misdemeanor, punishable as provided in G.S. 143-215.114(b).

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

(3) In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(4) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 33 of Chapter 143, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(e) (1) If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing, the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

(3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind

any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

(4) If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.

(6) Nothing in this Article and Article 21 shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article and Article 21 for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.

(7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.

(8) Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water and Air Resources" and for "Board" throughout the section.

§ 143-215.113. General provisions as to procedure; appeals. — All hearings provided for in this Article to be conducted by the Environmental Management Commission shall be in accordance with the provisions of G.S. 143-215.4. Appeals from any final order or decision of the Environmental Management Commission shall be pursuant to the provisions of G.S. 143-215.5. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" in two places.

§ 143-215.114. Enforcement procedures. — (a) Civil Penalties. —

(1) A civil penalty of not more than five thousand dollars ($5,000) may be assessed against any person who:

a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;

d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article;

e. Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars ($5,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) The Environmental Management Commission, or, if authorized by the Environmental Management Commission, the Department of Natural Resources and Community Development, may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in G.S. 143-315.

(b) Criminal Penalties. —

(1) Any person who willfully or negligently violates any classification,

standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any regulation of the Environmental Management Commission implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article and Article 21, or regulations of the Environmental Management Commission implementing this Article and Article 21, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 or regulations of the Environmental Management Commission implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. — Whenever the Department of Natural Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development, either before or after the institution of any other action or proceeding authorized by this Article and Article 21, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article and Article 21 or the regulation of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the

proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" throughout the section.

The first 1975 amendment corrected an error in Session Laws 1973, c. 821, s. 6, by substituting "or" for "of" following "Environmental Management Commission" in paragraph e of subdivision (1) of subsection (a).

The second 1975 amendment designated the former subdivision (a)(3) as present subdivision (a)(4), added present subdivision (a)(3), and substituted the language beginning "fifteen thousand dollars" and ending "which a violation continues" for "twenty-five thousand dollars ($25,000) per day of violation" near the end of subdivision (b)(1).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and third sentences of subdivision (a)(4) and in three places in the first sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Section 143-315, referred to in subdivision (4) of subsection (a), was repealed by Session Laws 1973, c. 1331, s. 2, originally effective July 1, 1975, but postponed until Feb. 1, 1976, by Session Laws 1975, c. 69, s. 4. After Feb. 1, 1976, for provisions as to the scope of the court's review, see § 150A-51.

ARTICLE 22.

State Ports Authority.

§§ 143-216 to 143-228.1: Recodified as §§ 143B-452 to 143B-467 by Session Laws 1977, c. 198, s. 9.

ARTICLE 23.

Armories.

§ 143-229: Repealed by Session Laws 1975, c. 604, s. 1.

Cross Reference. — As to present provisions relating to armories, see § 127A-1 et seq.

§§ 143-232 to 143-236.1: Repealed by Session Laws 1975, c. 604, s. 1.

Cross Reference. — As to present provisions relating to armories, see § 127A-1 et seq.

ARTICLE 24.

Wildlife Resources Commission.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members. — There is hereby created the Wildlife Resources Commission of the Department of Natural Resources and Community Development which shall consist of 13 citizens of North Carolina who shall be appointed as is hereinafter provided. The Governor shall appoint one member of the Commission from each of the following geographical districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties: Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

The Governor shall appoint two members of the Commission from the State at large. The Lieutenant Governor shall appoint one member of the Commission from the membership of the Senate. The Speaker of the House of Representatives shall appoint one member of the Commission from the membership of the House of Representatives.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or 138-6 as the case may be, which shall be paid from the Wildlife Resources Commission Fund. (1947, c. 263, s. 4; 1961, c. 737, s. 1½; 1965, c. 859, s. 2; 1971, c. 285; 1977, c. 771, s. 4; c. 906, s. 1.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, rewrote the first paragraph and added the eleventh and thirteenth paragraphs.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in the first sentence of this section as amended by Session Laws 1977, c. 906.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-241. Appointment and terms of office of Commission members; filling of vacancies. — The terms of office of the members of the North Carolina Wildlife Resources Commission who are now serving as members from the State at large shall expire June 30, 1965. The terms of the remaining nine incumbent members of said Commission shall not expire until the end of the terms for which they were appointed.

On the first day of July, 1965 and thereafter, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several geographical districts set forth in G.S. 143-240 as follows:

On July 1, 1965, one from each of districts two, five and eight to serve six years each;

On July 1, 1967, one member from each of districts three, six and nine, to serve terms of six years each;

On July 1, 1969, one member from each of districts one, four and seven, to serve terms of six years each.

Thereafter as the terms of office of the members of the Commission from the several districts expire, their successors shall be appointed for terms of six years each.

Vacancies among the membership of the Commission appointed by the Governor from the several districts occurring through expiration of terms of the members of the Commission shall be filled by appointment by the Governor from a list of five names from each wildlife district, recommended and submitted by the adult interested citizens of each respective district. When the term of a member expires, the Director or his designee shall call a meeting of the adult interested citizens in that district not later than 60 days prior to the expiration of such member's term. Such meetings shall be held as near to the geographic center of the district as possible and in a public building. Notice of the meeting shall be given by publication once each week for four successive weeks, the fourth notice appearing at least 10 days prior to the meeting, in a newspaper having general circulation in the district. In addition, notice of the meeting shall be posted at the courthouse door of each county in the district at least 30 days prior to said meeting. At such meeting, the adult interested citizens in attendance shall select, and the Director shall submit to the Governor, a list of five residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. The Governor shall appoint a successor to the member whose term is about to expire within 60 days following the submission to him by the Director of the list hereinabove referred to and in no event later than July 1.

Meetings of adult interested citizens held pursuant to this section shall be conducted pursuant to Robert's Rules of Order. When the meeting has been called to order, any adult interested citizen may place in nomination the name of an adult resident citizen of the respective district to be considered for nomination. After the nominations have ceased, each adult interested citizen present may vote for one of the nominees. The five receiving the most votes shall be submitted to the Governor.

"Adult interested citizen" as used in this section means any adult interested citizen who is a resident of any county within the district. All members appointed pursuant to this section shall serve until their successors are appointed and qualified.

Members of the Commission appointed from the State at large shall be appointed initially for terms expiring April 1, 1981, and thereafter for terms of four years. Each member of the Commission appointed by the Lieutenant Governor and each member of the Commission appointed by the Speaker of the House of Representatives shall be appointed for a two-year term beginning on July 1, 1977, and on July 1 of each odd-numbered year thereafter and shall serve until his successor is appointed and qualifies. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, inserted "among the membership of the Commission appointed by the Governor from the several districts" in the first sentence of the seventh paragraph and added the last paragraph.

Session Laws 1977, c. 906, s. 6, provides: "The terms of the incumbent members of the Commission shall not expire until the end of the terms for which they were appointed. The terms of any officers of the Commission shall be terminated on July 1, 1977."

§ 143-242. Vacancies by death, resignation or otherwise. — Appointments to fill vacancies of gubernatorial appointees on the Commission occurring by reason of death, disability, resignation or otherwise shall be made by the Governor for the balance of the unexpired terms by appointment of a member from the State at large, or from the appropriate district in accordance with the procedure set out in G.S. 143-241. Appointments to fill vacancies of those members of the Commission appointed by the Lieutenant Governor or appointed

by the Speaker of the House of Representatives which occur by reason of death, disability, resignation or otherwise shall be made by the appointing authority who originally appointed the member whose death, disability or resignation created the vacancy. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance. (1947, c. 263, s. 6; 1973, c. 825, s. 3; 1977, c. 906, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote all of this section preceding the last sentence, which was formerly the second paragraph of the section.

§ 143-243. Organization of the Commission; election of officers; Robert's Rules of Order. — The Commission shall hold at least two meetings annually in the City of Raleigh, one in January and one in July, and seven members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any five members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed.

At the first scheduled meeting of the Commission after July 1, 1977, and on July 1 of each odd-numbered year thereafter, the Commission shall select from among its membership a chairman and a vice-chairman who shall serve for terms of two years or until their successors are elected and qualified. The Secretary of Natural Resources and Community Development or his designee shall serve as secretary of the Commission.

The chairman shall guide and coordinate the official actions and official activities of the Commission in fulfilling its program responsibility for (1) the appointment and separation of the executive director of the Commission, (2) organizing the personnel of the Commission, (3) setting the statewide policy of the Commission, (4) budgeting and planning the use of the Wildlife and Motorboat Funds, subject to the approval of the Advisory Budget Commission and the legislature, (5) holding public hearings, and (6) adopting regulations as authorized by law. The chairman shall report to and advise the Governor on the official actions and work of the Commission and on all wildlife conservation and boating safety matters that affect the interest of the people of the State.

Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order. (1947, c. 263, s. 7; 1973, c. 825, s. 4; 1977, c. 771, s. 4; c. 906, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, divided this section into paragraphs, substituted "seven" for "five" in the first sentence and "five" for "three" in the third sentence of the first paragraph, rewrote the second paragraph, and added the third paragraph.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in the second paragraph of the section as amended by Session Laws 1977, c. 906.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-245: Repealed by Session Laws 1977, c. 906, s. 5, effective July 1, 1977.

§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond.

Editor's Note. — Because the last sentence of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-247.2. Contributions for nongame wildlife. — The Wildlife Resources Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special wildlife conservation fund which shall be held and accounted for as a separate part of the Wildlife Resources Fund and which shall be made available to the Wildlife Resources Commission for conservation, protection, enhancement, preservation and perpetuation of nongame wildlife species and those species which may be endangered or threatened with extinction. The special wildlife conservation fund will be audited by the State Auditor. Emblems of different size, shape, type or design may be used to recognize contributions in different amounts, but no such emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00). (1975, c. 77.)

§ 143-248. Transfer of lands, buildings, records, equipment, and other properties.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

Cited in Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

§ 143-249. Transfer of personnel.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-250. Wildlife Resources Fund.

Editor's Note. —
Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-252. Article subject to Chapter 113. — Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of Natural and Economic Resources contained in Subchapter IV of Chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter. (1947, c. 263, s. 16; 1965, c. 957, s. 17; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 143-253. Jurisdictional questions. — In the event of any question arising between the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17; 1973, c. 1262, s. 86.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development."

§ 143-254. Conflicting laws; regulations of Department continued.

Editor's Note. — Because the second paragraph of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-254.2. Enforcement of local laws. — (a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce all local acts heretofore or hereinafter enacted respecting game animals, furbearing animals and birds, including local acts which prohibit or restrict hunting from, to or across public roads and highways and including local acts which prohibit or restrict the taking of specified animals or birds.

Provided, however, that the provisions of this section shall not apply on the lands of the Eastern Band of Cherokee Indians.

(b) The provisions of this section shall not be construed to require the hiring of additional personnel by the North Carolina Wildlife Resources Commission. (1977, c. 120, ss. 1-3.)

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§§ 143-255 to 143-257: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

Cross Reference. — As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

§§ 143-259, 143-260: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

Cross Reference. — As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

ARTICLE 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-267. Release and payment of funds to State Treasurer; delivery of other assets to Secretary of Administration. — Whenever the statutes

creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the Supreme Court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the State Treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the Secretary of Administration for the State of North Carolina. (1949, c. 740, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" near the end of the section.

§ 143-268. Official records turned over to Department of Cultural Resources; conversion of other assets into cash; allocation of assets to State agency or department. — The Secretary of Administration shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the Department of Cultural Resources to be held pursuant to the statutes relating to such Department. The Secretary of Administration shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such sale with the State Treasurer: Provided, that the Secretary of Administration, in his discretion, may allocate to any State agency or department, the whole or any part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2; 1973, c. 476, s. 48; 1975, c. 879, s. 46.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" in three places.

§ 143-270. Statement of claims against board or agency; time limitation on presentation. — Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this Article, may present a verified statement of the same to the Secretary of Administration, who shall investigate and approve or disapprove such claim; any claim not presented to the Secretary of Administration within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" in two places.

§ 143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina. — The Secretary of Administration shall certify to the State Treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the State Treasurer shall, out of the funds in his hands for the account of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment insofar as funds are available. Should any balance remain in the hands of the Treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" near the beginning of the first sentence.

ARTICLE 29A.

Governor's Council on Employment of the Handicapped.

§ 143-283.7. Funds, expenses and gifts; reports. — There is hereby created in the State treasury a special revolving fund to be known as "Employment of the Handicapped Revolving Fund." The fund shall consist of all moneys received by the Department of Administration, or in behalf of the Department from the United States, any federal or State agency or institution, gifts, contributions, donations and bequests, but not excluding any other source of revenue for the purpose of promoting the employment and rehabilitation of handicapped citizens of North Carolina. The Department of Administration may use said revolving fund to pay the salaries and general expenses of the administrative office, personnel, materials, supplies, equipment, travel; provide awards, citations, scholarships, but not excluding other purposes for the promoting of the employment and rehabilitation of handicapped citizens. All expenditures from said fund shall be subject to the provisions of the Executive Budget Act.

Any moneys remaining in said revolving fund at the end of any fiscal year or biennium shall not revert to the general fund or any other fund but shall continue to remain in said revolving fund to be expended for the purposes of this Article.

The Department of Administration shall accept, hold in trust, and authorize the use of any grant or devise of land, or any donation or bequests of money or other personal property made to the Department, so long as the terms of the grant, donation, bequest or will are carried out. The Department of Administration may invest and reinvest any funds and money, lease, or sell any real or personal property, and invest the proceeds for the purpose of promoting the employment and rehabilitation of the handicapped unless prohibited by the terms of the grant, donation, bequest, gift, or will. If, due to circumstances, the requests of the person or persons, making the grant, donation, bequest, gift, or will cannot be carried out, the Department of Administration shall have the authority to use the remainder thereof for the purpose of this Article. Said funds shall be deposited in the revolving fund to carry out the provisions of this Article. Such gifts, donations, bequests, or grants shall be exempt for tax purposes. The Department shall report annually to the Governor all moneys and properties received and expended by virtue of this section.

All funds and properties in the hands of the Governor's Executive Committee on July 1, 1973, shall be transferred to the Department of Administration for use in furtherance of the purposes of this Article. (1961, c. 981; 1973, c. 476, s. 179; 1975, c. 19, s. 54; 1977, c. 872, s. 4.)

Cross-Reference. —
As to appointment, powers and duties, etc., of the Governor's Council on Employment of the Handicapped, see §§ 143B-412, 143B-413.

Editor's Note. —
The 1975 amendment corrected an error in the 1973 amendatory act by substituting "bequests" for "requests" near the middle of the second sentence of the first paragraph.

The 1977 amendment, effective July 1, 1977, substituted "Department of Administration" for "Department of Human Resources" throughout the section.

Session Laws 1977, c. 872, s. 3, provides: "The Employment of the Handicapped Fund as created by G.S. 143-283.7, as the same is found in the 1975 Cumulative Supplement to Volume 3C of the General Statutes, and all records, monies, appropriations, equipment and property connected therewith are transferred from the Department of Human Resources to the Department of Administration."

ARTICLE 29C.

Youth Councils Act.

§§ 143-283.24 to 143-283.30: Repealed by Session Laws 1975, c. 879, s. 30, effective July 1, 1975.

Cross Reference. — For present provisions as to youth councils, see §§ 143B-385 through 143B-388.

§ 143-283.32: Repealed by Session Laws 1975, c. 879, s. 30, effective July 1, 1975.

ARTICLE 29D.

Manpower Council.

§§ 143-283.41 to 143-283.48: Repealed by Session Laws 1975, c. 879, s. 42, effective July 1, 1975.

Cross Reference. — For present provisions as to the North Carolina Manpower Council, see §§ 143B-395, 143B-396.

ARTICLE 30.

Nutbush Conservation Area.

§§ 143-284 to 143-286: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

Cross Reference. — As to the John H. Kerr Reservoir Committee, see §§ 143B-328 through 143B-330.

§ 143-286.1. Nutbush Conservation Area. — The Department of Natural Resources and Community Development is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The Department of Natural Resources and Community Development is hereby authorized to control and develop the area so leased and to enter into

sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2; 1973, c. 1262, ss. 28, 76; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Board of Conservation and Development" in the first sentence and for "John H. Kerr Reservoir Development Commission" in the third sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and third sentences.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-287, 143-288: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations. — The boards of county commissioners of the Counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Department of Natural Resources and Community Development for the purpose of defraying the necessary expenses of operation and the Department of Natural Resources and Community Development is authorized and empowered to accept grants or donations from any interested citizens or from any State or federal agency. (1951, c. 444, s. 6; 1973, c. 1262, s. 76; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Commission" in two places.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-290, 143-290.1: Repealed by Session Laws 1973, c. 1262, s. 76, effective July 1, 1974.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages. — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Department of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by

appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of thirty thousand dollars ($30,000). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34.)

Editor's Note. —

The second 1973 amendment substituted "thirty thousand dollars ($30,000)" for "twenty thousand dollars ($20,000)" at the end of the last sentence.

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the first sentence.

Session Laws 1973, c. 1225, s. 2, provides: "This act shall not apply to claims arising prior to ratification." The act was ratified April 9, 1974.

Amendment Effective July 1, 1979. — Session Laws 1977, c. 529, ss. 1, 2, effective July 1, 1979, will amend this section to read as follows:

"**§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.** — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred thousand dollars ($100,000) on account of injury and damage to any one person."

Session Laws 1977, c. 529, s. 3, provides: "This act shall become effective July 1, 1979, and shall apply only to those claims based upon negligence occurring thereafter."

For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Application of Article to Local Units. —

A tort claim arising out of a local board of education's negligence in installing unsafe glass at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974).

Cited in Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975); Mazzucco v. North Carolina Bd. of Medical Exmrs., 31 N.C. App. 47, 228 S.E.2d 529 (1976); Lanier v. North Carolina State Hwy. Comm'n, 31 N.C. App. 304, 229 S.E.2d 321 (1976).

§ 143-293. Appeals to Court of Appeals.

Inquiry of Reviewing Court Limited, etc. —

In reviewing a decision of the Industrial Commission in a case arising under the Tort Claims Act, an appellate court has two questions to consider: whether the Commission's findings of fact are supported by competent evidence, and whether its conclusions of law are supported by its findings of fact. Tanner v. State Dep't of Cor., 19 N.C. App. 689, 200 S.E.2d 350 (1973).

Finding of Commission Conclusive if Supported by Competent Evidence. —

In accord with 2nd paragraph in original. See Tanner v. State Dep't of Cor., 19 N.C. App. 689, 200 S.E.2d 350 (1973).

Applied in Lanier v. North Carolina State Hwy. Comm'n, 31 N.C. App. 304, 229 S.E.2d 321 (1976); Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

§ 143-295. Settlement of claims. — (a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of one thousand dollars ($1,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of one thousand dollars ($1,000) and claims of infants or persons non sui juris, provided such claims have been subject to review and approval by the Industrial Commission.

(b) In settlements under one thousand dollars ($1,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in G.S. 143-297 shall not be required.

(c) Transfer of title of a motor vehicle acquired in behalf of the State in settlement of claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as provided for such transfer by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1; 1973, c. 699; 1975, c. 756.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, rewrote subsection (a), added present subsection (b), redesignated former subsection (b) as present subsection (c) and substituted "as provided for such transfer" for "as title is transferred" near the end of that subsection.

§ 143-299.1. Contributory negligence a matter of defense; burden of proof.

Applied in Oates v. North Carolina Dep't of Motor Vehicles, 24 N.C. App. 690, 212 S.E.2d 33 (1975).

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles. — (a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when the salary of such driver is paid or authorized to be paid from the State Public School Fund who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy

of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission shall make award of damages against any county or city board of education pursuant to this section, the Attorney General shall draw a voucher for the amount required to pay such award. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(d) The Attorney General may defend any civil action which may be brought against the driver of a public school bus or school transportation service vehicle or school bus maintenance mechanic when such driver or mechanic is paid or authorized to be paid from the State Public School Fund. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in such civil action not to exceed the limit provided under the Tort Claims Act. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims which would be within the jurisdiction of the Industrial Commission under the Tort Claims Act. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1.)

Editor's Note. — The first 1975 amendment inserted the language beginning "alleged mechanical defects" and ending "or as a result of any" near the beginning of the first sentence in subsection (a).

The second 1975 amendment, effective July 1, 1975, inserted "or authorized to be paid" near the middle of the first sentence of subsection (a), substituted "State Public School Fund" for "State Nine Months School Fund" in that sentence and rewrote subsections (c) and (d).

Session Laws 1975, c. 589, s. 2, provides: "This act shall not affect any pending litigation."

The 1977 amendment, effective July 1, 1977, rewrote subsection (d).

This section is in derogation of sovereign immunity and, therefore, it must be strictly construed and its terms must be strictly adhered to. Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

Meaning of "Operating". — See Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

Installation of Unsafe Glass at End of Gymnasium. — A tort claim arising out of a local board of education's negligence in installing unsafe glass at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974).

ARTICLE 31A.

Defense of State Employees.

§ 143-300.6. Payment of judgments; compromise and settlement of claims. — (a) All final judgments awarded in courts of competent jurisdiction against

State employees in actions or suits to which this Article applies, or any amounts payable under a settlement of such suits in accordance with this section, shall be paid by the department, agency, board, commission, institution, bureau or authority which employs or employed the State employee. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or to authorize the payment of any judgment or settlement against a State employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, provided that no settlement of any such claim in an amount in excess of the limit provided in the Tort Claims Act shall be made without the approval of the employee. In a case wherein the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, the settlement in excess of the limit provided in the Tort Claims Act must be approved by the private counsel.

(c) The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance up to the limit of the Tort Claims Act. (1973, c. 1372; 1975, c. 209, ss. 1, 2.)

Editor's Note. — The 1975 amendment substituted "the limit provided in the Tort Claims Act" for "twenty thousand dollars ($20,000)" at the end of subsection (a) and in two places in subsection (b) and added subsection (c).

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§§ 143-306 to 143-316: Repealed by Session Laws 1973, c. 1331, s. 2, effective February 1, 1976.

Cross References. — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

ARTICLE 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

§§ 143-317, 143-318: Repealed by Session Laws 1973, c. 1331, s. 2, effective February 1, 1976.

Cross Reference. — For present provisions as to evidence in administrative proceedings, see §§ 150A-28 through 150A-30.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

ARTICLE 33B.

Meetings of Governmental Bodies.

§ 143-318.1. Public policy.

Voting for a person to fill a vacancy on a board is "actions" under this section. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Voting by secret ballot cannot be reconciled with "openly" under this section. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Exceptions to the open meetings law should be strictly construed. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Burden on Those Excepting. — Those seeking to come within the exceptions to the open meetings law should have the burden of justifying their action. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Effect of Closed Meeting on Validity of Action Taken. — There is nothing in this Article which supports the contention that all action taken at a meeting of any governmental body of the State, or of one of its political subdivisions, is completely void if such meeting was not open to the public. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Stated in Eggimann v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754 (1974); Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

§ 143-318.2. All official meetings open to the public.

Legislative Intent. — The General Assembly, it appears, attempted to draft this section in such terms that it would cover (with a few specific exceptions) every meeting where the business of the people may be conducted. Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Meetings of Faculty of University of North Carolina Law School. — See Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Reasonable Public Notice. — In the absence of statutory provisions for notice, reasonable public notice of a board of education's meetings should be given, taking into consideration the urgency of the matter necessitating the meeting. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Applied in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-318.3. Executive, closed and private sessions.

Quoted in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-318.4. Exceptions. — The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

(3) The N.C. State Department of Correction

(4) The State Department of Correction

(1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in subdivision (3) and for "Probation Commission" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (4) are set out.

A board of education cannot evade the provisions of statutes requiring its meetings to be open to the public merely by resolving itself into a committee of the whole. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Failure to Come within Exception (7). — Defendants, members of a board of education, failed to show that their closed session came within the exception provided by subdivision (7) of this section, where, prior to the closed session, eight names were placed in nomination to fill a vacant position on the board, and following the passage of a motion authorizing same, the members of the board were appointed a committee of the whole to study and investigate the names recommended. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Stated in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

§ 143-318.6. Mandamus and injunctive relief.

Application of Section Limited. — The provisions of this section were intended to apply only to a situation where a citizen has been refused access to a meeting required to be open. Eggimann v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754, cert. denied, 285 N.C. 756, 209 S.E.2d 280 (1974).

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Cited in News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

ARTICLE 34.

Local Affairs.

§ 143-319: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

§ 143-320. Definitions. — As used in this Article, unless the context otherwise requires:

"Council" means the Community Development Council.

"Department" means the Department of Natural Resources and Community Development.

"Secretary" means the Secretary of Natural Resources and Community Development.

"Recreation" means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 771, ss. 4, 8.)

Cross References. — As to the organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Community Development Council, see §§ 143B-305 through 143B-307. As to the Parks and Recreation Council, see §§ 143B-311 through 143B-313.

Editor's Note. — The 1973 amendment, effective July 1, 1974, rewrote the first three definitions, which formerly defined "Council" as the Advisory Council on Local Affairs, "Department" as the North Carolina Department of Local Affairs and "Director" as the Director of Local Affairs, and deleted a definition of "Division."

The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in the first definition and "Natural Resources and Community Development" for "Natural and Economic Resources" in the second and third definitions.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-321, 143-322: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

§ 143-323. Functions of Department of Natural Resources and Community Development. — (a) Recreation. — The Department of Natural Resources and Community Development shall have the following powers and duties with respect to recreation:

(1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.

(2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of

the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.

(3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.

(6) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts, bequests, and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.

(7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.

(8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Repealed by Session Laws 1977, c. 70, s. 32, effective April 1, 1977.

(c) Local Planning Assistance. — The Department shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through

contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) Federal Assistance. — The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General. — The Department shall have the following general powers and duties.

(1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.

(2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.

(3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to State, federal, and private services and programs available to local government; and to facilitate local participation in those programs by furnishing information, education, guidance, and technical assistance with respect to those programs.

(4) To assist in coordinating State and federal activities relating to local government.

(5) To assist local governments in the identification and solution of their problems.

(6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.

(7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.

(8) To inform and advise the Governor on the affairs and problems of local government and on the need for the administrative and legislative action with respect to local government. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 70, s. 32; c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Local Affairs" in the introductory paragraph.

The first 1977 amendment, effective April 1, 1977, deleted subsection (b), relating to the law-and-order powers and duties of the Department.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language of subsection (a).

Session Laws 1977, c. 70, s. 34, and c. 771, s. 22, contain severability clauses.

§ 143-324: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

§ 143-325. Functions of committees. — (a) Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

(c) Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, repealed subsection (a), relating to the Committee on Recreation, and subsection (c), relating to other committees and advisory agencies.

As subsection (b) was not changed by the amendment, it is not set out.

§ 143-326. Transfer of functions, records, property, etc.

(c) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Community Planning of the Department of Conservation and Development are transferred to the Department of Local Affairs.

(1973, c. 1262, s. 51.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, deleted "effective July 1, 1969" at the end of subsection (c). Because this section relates to past events, no other changes have been made in it pursuant to the 1973 amendatory act, which reorganized the Department of Natural and Economic Resources.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 143-327: Repealed by Session Laws 1973, c. 1262, s. 51, effective July 1, 1974.

ARTICLE 36.

Department of Administration.

§ 143-334. Short title.

Cross Reference. — For subsequent provisions as to the Department of Administration, see § 143B-366 et seq.

§ 143-336. Definitions. — As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, and bridge structures.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46.)

Editor's Note.—
The 1975 amendment, effective July 1, 1975, deleted definitions of "Director" and "Division," inserted the definition of "Secretary" and substituted "Department of Administration" for "General Services Division" in the definitions of "public buildings," "public buildings and grounds" and "public grounds."

§§ 143-337 to 143-339: Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

§ 143-340. Powers and duties of Secretary. — The Secretary of Administration has the following powers and duties:

(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed ten percent (10%) of the savings resulting during the first year following adoption or a maximum of one thousand dollars ($1,000).

(2) to (9) Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Secretary or the Department.

(11) Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

(13) Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

(15), (16) Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. Upon the allocation of parking spaces to any agency pursuant to such rules and regulations, the agency shall adopt written guidelines governing the individual assignment of such parking spaces by the agency. Such guidelines shall give first priority treatment to the physically handicapped and to car poolers and van poolers, however, first priority shall be given to those on call for duty at a time other than normal working hours. A copy of said guidelines shall be made available for inspection by any person upon request.

(22) To appoint as special police officers such reliable persons as he may deem necessary, and such officers shall have the same power of arrest as herein conferred upon the Secretary. Before the Secretary or the special police officers may exercise the power of arrest, they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(23) Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

(1975, c. 204; c. 879, s. 46; 1977, c. 119; c. 288, s. 2.)

Editor's Note.—
The first 1975 amendment, effective July 1, 1975, added the last two sentences of subdivision (18).

The second 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" in the introductory paragraph, in subdivision (10) and in two places in subdivision (22) and repealed subdivisions (1) through (9), (11), (13), (15), (16) and (23), all relating to general duties of the former Director of Administration.

The first 1977 amendment added the fourth sentence in subdivision (18).

The second 1977 amendment, effective July 1, 1977, added present subdivision (1). Former subdivision (1), which read "To administer the Department of Administration," was repealed by Session Laws 1975, c. 879, s. 46.

As the other subdivisions were not changed by the amendments, they are not set out.

§ 143-341. Powers and duties of Department. — The Department of Administration has the following powers and duties:

(1) Budget:

a. To exercise those powers and perform those duties which are delegated or assigned to it by the Director of the Budget pursuant to the Executive Budget Act.

b. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Budget Division.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

(8) General services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the Department.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department.
5. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.

7. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all state-owned motor vehicles under the control of the Department, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Department, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules and regulations adopted by the Department pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Department and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
8. To require any State agency to keep such records and make such reports to the Secretary as the Secretary may require regarding motor vehicle use.
9. To acquire motor vehicle liability insurance on all state-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.

j. To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(1975, c. 399, ss. 1, 2; c. 879, s. 46.)

Cross Reference. — As to powers and duties of the Department of Administration, see also §§ 143B-367, 143B-368.

Editor's Note.—

The first 1975 amendment deleted "metes and bounds" following "acreage," and "condition, current value," preceding "and current use" in the second sentence of paragraph a of subdivision (4), substituted "may" for "shall" in the third and fourth sentences of that paragraph and substituted "and floor plans" for "condition, floor plans, and current value" in the second sentence of paragraph b of subdivision (4).

The second 1975 amendment, effective July 1, 1975, substituted "Budget Division" for "Budget Bureau" at the end of paragraph b of subdivision (1), rewrote paragraph i 2 of subdivision (8), substituted "Department" for "General Services Division" at the end of paragraph i 3 and in the last sentence of paragraph j of subdivision (8) and substituted "Secretary" for "Director" and "Department" for "Division" throughout subdivision (8).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (1), (4) and (8) are set out.

Applied in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-343. General Services Division.

Editor's Note.—

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1975, c. 879, s. 46.

§ 143-344. Transfer of functions, property, records, etc.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1975, c. 879, s. 46.

§ 143-345.4. Moore and Nash squares and other public lots. — The governing body of the City of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Secretary, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the Secretary shall call the matter to the attention of the governing body, and if the governing body then fails for a period of 60 days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the City of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2; 1971, c. 1097, s. 4; 1975, c. 879, s. 46.)

Editor's Note.—

The 1975 amendment, effective July 1, 1975, substituted "Secretary of" for "Director" in two places in the second paragraph.

§ 143-345.6. Land records management program. — (a) The Secretary of Administration shall establish a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist

of the activities provided for in subsections (b), (c), (d), and (e) below, and other related activities essential to the effective conduct of the management program.

(b) The Secretary shall, in cooperation with the Secretary of Cultural Resources, develop recommended standards and specifications for the reproduction of records by photography, microphotography, and by other means, and for the security of recorded documents. The recommended standards and specifications developed shall take into account the needs of the general public, space requirements of local offices, the costs of various filming and recording technologies, personnel available to staff local records offices, and the need for permanency of records affecting title to land. The recommended standards and specifications shall not be binding upon the offices of local governments to which they apply.

(c) Mapping programs.

(1) The Secretary shall, in cooperation with the Secretary of the Department of Natural Resources and Community Development, conduct a program for the preparation of county base maps pursuant to standards prepared by the Department of Natural Resources and Community Development.

(2) The Secretary shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county property-line maps under the direction of qualified surveyors pursuant to standards prepared by the Departments of Revenue and Natural Resources and Community Development.

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make non-binding recommendations to the board, the register of deeds, and to the General Assembly.

(e) The Secretary, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

(1) Uniform indexing of land records;

(2) Uniform recording and indexing procedures for maps, plats, and condominiums;

(3) Centralized recording systems;

(4) Filming, filing, and recording techniques and equipment; and

(5) Computerized land records systems.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Governor shall appoint 12 members to the committee; one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

(1) The North Carolina Association of Assessing Officers;

(2) The North Carolina Section of the American Society of Photogrammetry;

(3) The North Carolina Chapter of the American Institute of Planners;

(4) The North Carolina Section of the American Society of Civil Engineers;

(5) The North Carolina Tax Collectors' Association;

(6) The North Carolina Association of Registers of Deeds;

(7) The North Carolina Bar Association;

(8) The North Carolina Society of Land Surveyors; and

(9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for

two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Governor shall appoint the chairman, and the committee shall meet at the call of the chairman. The Governor in making the appointments shall try to achieve geographical and population balance on the advisory committee; one third of the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5. (1977, c. 771, s. 4; c. 932, s. 1.)

Editor's Note. — Session Laws 1977, c. 932, s. 3, provides that the act shall expire on July 1, 1981, unless further extended prior to that time.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in this section as enacted by Session Laws 1977, c. 932.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 37A.

Marine Science Council.

§§ 143-347.1 to 143-347.5: Repealed by Session Laws 1975, c. 879, s. 33, effective July 1, 1975.

Cross Reference. — For present provisions as to the North Carolina Marine Science Council, see §§ 143B-389, 143B-390.

§§ 143-347.6 to 143-347.9: Reserved for future codification purposes.

ARTICLE 37B.

Marine Resources Center Administrative Board.

§ 143-347.10. Administrative Board created. — There is hereby created and established within the North Carolina Marine Science Council a board to be known as the North Carolina Marine Resources Center Administrative Board. Appointment to the North Carolina Marine Resources Center Administrative Board does not constitute appointment to or membership in the Marine Science Council. (1975, c. 590.)

§ 143-347.11. Membership; terms; expenses. — (a) The Marine Resources Center Administrative Board shall consist of 16 voting members representing the following institutions, agencies and professions and appointed by the Governor from nominations submitted as follows:

(1) Four members of the North Carolina Marine Science Council nominated by the North Carolina Marine Science Council to serve as ex officio members of the Board.

(2) The Secretary of the Department of Natural Resources and Community Development and the Secretary of the Department of Administration or their designees shall serve as ex officio members of the Board.

(3) One representative of the office of the University of North Carolina Sea Grant Program nominated by the executive director of the University of North Carolina Sea Grant Program.

(4) One representative who shall be actively engaged with and have experience in a marine-based industry nominated by the Governor.
(5) One representative actively engaged in teaching classes in marine vocational education in the community college system nominated by the president of the North Carolina Department of Community Colleges.
(6) One representative actively engaged in marine vocational education at the high school level nominated by the Superintendent of Public Instruction.
(7) One representative of Dare County nominated by the Board of County Commissioners of Dare County.
(8) One representative of Carteret County nominated by the Board of County Commissioners of Carteret County.
(9) One representative of New Hanover County nominated by the Board of County Commissioners of New Hanover County.
(10) Three representatives of the University of North Carolina nominated by the President of the University of North Carolina upon the recommendation of the University Marine Science Council.

Membership on the Marine Resources Center Administrative Board shall become vacant automatically if a member ceases to qualify for nomination to his seat under the terms of this subsection. In the event of a vacancy occurring during a term of office the seat shall be filled in the same manner as the original appointment and shall be for the balance of the unexpired term.

(b) Membership on the Marine Resources Center Administrative Board and on the North Carolina Marine Science Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(c) The members shall serve staggered terms of office of six years. At the expiration of each member's term, the Governor shall reappoint or replace the member with a new member of like qualifications in accordance with the procedure established in subsection (a). The initial term shall be determined by the Governor in accordance with customary practice but four of the initial members shall be appointed for four-year terms and four for two-year terms.

(d) In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualifications in accordance with the procedure established in subsection (a), who shall then serve the remainder of his predecessor's term.

(e) The chairman of the Board shall be designated by the Governor from among the members of the Board to serve as chairman at the pleasure of the Governor.

(f) The chairman and members of the Board shall serve without compensation for their services, but shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of their official duties to the same extent as allowed other State officers. (1975, c. 590; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (2) of subsection (a). Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-347.12. Rules of procedure; meetings; cooperation of other agencies. — The Board shall adopt its own rules of procedure and shall meet at such times and in such places as it may deem necessary to carry out its functions. The Board is authorized to secure directly from any executive department, agency, subdivision or independent instrumentality of State or local governments, any information it deems necessary to carry out its functions. Each department, agency, subdivision and independent instrumentality of State or local

government is authorized to cooperate with the Board, and, to the extent permitted by law, to furnish information to the Board, as the Board deems necessary, upon request made by the chairman. (1975, c. 590.)

§ 143-347.13. Duties and responsibilities. — The Board shall have the following duties and responsibilities:

(1) To adopt goals and objectives for the centers and continually to review and revise these goals and objectives.

(2) To review and submit to the Secretary of the Department of Administration for approval requests for use of the center facilities and to advise the Secretary of the Department of Administration on the most appropriate utilization consistent with the goals and objectives of the center and the current overall State plan provided by the Marine Science Council.

(3) To continually review and evaluate the types of projects and programs being carried out in the center facilities and to determine if the operation of the facilities is in compliance with the established goals and objectives.

(4) To recommend to the Secretary of the Department of Administration such policies and procedures needed to assure effective staff performance and proper liaison between center facilities in carrying out the overall purposes of the center programs.

(5) To report annually to the Marine Science Council on the overall center operation and solicit from the Marine Science Council suggestions for program improvement.

(6) To review center budget submissions to the Secretary of the Department of Administration for review and approval and inclusion in the budget request.

(7) To recruit, and recommend to the Secretary of the Department of Administration, candidates for the positions of program administrator and the three center administrators. (1975, c. 590.)

§ 143-347.14. Staff and financial support. — The Secretary of the Department of Administration shall furnish such staff and financial support to the Board as may be necessary to carry out its functions from funds appropriated or available for these purposes. (1975, c. 590.)

ARTICLE 38.

Water Resources.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-350. Definitions. — Definitions as used in this Article:

"Environmental Management Commission" means the Environmental Management Commission created by G.S. 143-214.

"Department" means the Department of Natural Resources and Community Development created by G.S. 143-212. (1959, c. 779, s. 1; 1967, c. 892, s. 12; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and for "Board of Water and Air Resources."

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Water and Air Resources" in the definition of "Department."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Sections 143-212 and 143-214, referred to in this section, were repealed by Session Laws 1973, c. 1262, s. 23. As to creation of the Department of Natural Resources and Community Development, see § 143B-276. As to creation of the Environmental Management Commission, see § 143B-282.

§ 143-354. Ordinary powers and duties of the Environmental Management Commission. — (a) Powers and Duties in General. — Except as otherwise specified in this Article, the powers and duties of the Environmental Management Commission shall be as follows:

(1) The Environmental Management Commission shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.

(2) The Environmental Management Commission shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) The Environmental Management Commission, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Environmental Management Commission affecting the water supply of such municipality or unit together with the Environmental Management Commission's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.

(4) The Environmental Management Commission is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Environmental Management Commission.

(5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Environmental Management Commission shall solicit from the various water interests of the State their suggestions thereon.

(6) The Environmental Management Commission may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Environmental Management Commission shall be available to the public.

(8) The Environmental Management Commission shall adopt such rules and regulations as may be necessary to carry out the purposes of this Article.

(9) Any member of the Environmental Management Commission or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning

streams and watersheds, subject to responsibility for any damage done to property entered.

(10) The Environmental Management Commission is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally authorized purposes in federal projects.

(11) The Environmental Management Commission is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Environmental Management Commission shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to subsection (a)(1) of this section, subject to equitable adjustment of financial responsibility.

(b) Declaration of Water Emergency. — Upon the request of the governing body of a county, city or town the Environmental Management Commission shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action as hereinafter provided. Upon making such determination, the Environmental Management Commission shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Environmental Management Commission shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed 30 days but the Governor may declare any number of successive emergencies upon request of the Environmental Management Commission.

(c) Water Emergency Powers and Duties of the Environmental Management Commission. — Whenever, pursuant to this Article, the Governor has declared the existence of a water emergency within a particular area of the State, the Environmental Management Commission shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this Article, designated as the period of emergency:

(1) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this Article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restrictions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Environmental Management Commission that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety. In the event waters are diverted pursuant to this Article, there shall be no diversion to the same person in any subsequent year unless

the Environmental Management Commission finds as fact from evidence presented that the person controlling the water or sewerage system has made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.

(2) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year or both within the discretion of the court; provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area.

(d) Temporary Rights-of-Way. — When any diversion of waters is ordered by the Environmental Management Commission pursuant to this Article, the person controlling the water or sewerage system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Environmental Management Commission.

(e) Compensation for Water Allocated during Water Emergency and Temporary Rights-of-Way. — Whenever the Environmental Management Commission, pursuant to this Article has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Environmental Management Commission, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Environmental Management Commission in an amount determined by the Environmental Management Commission and conditioned upon the payment of such loss or damage. (1959, c. 779, s. 1; 1967, c. 1071, ss. 1, 2; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board" and "Environmental Management Commission's" for "Board's" throughout the section.

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Natural Resources and Community Development and of the Secretary of said Department.

(b) Functions to Be Performed. — It shall be the duty of the Department of Natural Resources and Community Development to perform the following functions:

(1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) To cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) To discuss, with federal, State, and municipal officials and other interested persons, a program of development of rivers, harbors, and related resources.

(10) To make investigations and render reports requested by the Governor and the General Assembly.

(11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) To include in the biennial budget the cost of performing the additional functions indicated above.

(15) To initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

This Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and

suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department of Natural Resources and Community Development is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department of Natural Resources and Community Development to represent the State in connection with such duties.

(e) Registration with Department of Natural Resources and Community Development Required; Registration Periods. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Natural Resources and Community Development on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Natural Resources and Community Development When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Natural Resources and Community Development samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department of Natural Resources and Community Development on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department of Natural Resources and Community Development shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(k) Water Use Information. — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department of Natural Resources and Community Development showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the

using, withdrawing, diverting or obtaining water required to be reported occurred. Provided, however, this provision does not include use for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department of Natural Resources and Community Development. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in subsections (b), (d), (e), (f), (g) and (k). Because subsections (a) and (j) pertain to past events, they have not been changed pursuant to the 1973 amendatory act.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language of subsection (b) and in two places in each of subsections (d), (e), (f), (g), and (k).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Only the subsections changed by the amendments are set out.

§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources.

Editor's Note. —

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-357. Transfer of property, records, and appropriations.

Editor's Note. —

Session Laws 1973, c. 1262, s. 23(b)(60), effective July 1, 1974, provides: "Notwithstanding the conforming changes in the Executive Organization Act of 1973, G.S. 143-357(a) will remain as worded on the date of ratification of the Executive Organization Act of 1973."

Because subsections (b) and (c) of this section relate to past events, no changes have been made in those subsections pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-358. Cooperation of State officials and agencies. — All State agencies and officials shall cooperate with and assist the State Environmental Management Commission in enforcing and carrying out the provisions of this Article and the rules, regulations and policies adopted by the Environmental Management Commission pursuant thereto. (1959, c. 779, s. 6; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board of Water Resources" and for "Board."

§ 143-359. Biennial reports of Environmental Management Commission. — The Environmental Management Commission shall file with the Governor and the General Assembly a biennial report summarizing the activities of the Department for the preceding two years and recommending changes deemed necessary in laws, policies and administrative organization for a more beneficial use of the State's water resources. (1959, c. 779, s. 7; 1973, c. 1262, s. 23.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Environmental Management Commission" for "Board."

ARTICLE 39.

U.S.S. North Carolina Battleship Commission.

§§ 143-360 to 143-362: Repealed by Session Laws 1977, c. 741, s. 5, effective July 1, 1977.

Cross Reference. — For present provisions as to the U.S.S. North Carolina Battleship Commission, see §§ 143B-73 through 143B-74.3.

§ 143-366: Recodified as § 143B-73.1 by Session Laws 1977, c. 741, s. 8, effective July 1, 1977.

§ 143-367: Recodified as § 143B-74.1 by Session Laws 1977, c. 741, s. 8, effective July 1, 1977.

§ 143-368: Recodified as § 143B-74.2 by Session Laws 1977, c. 741, s. 8, effective July 1, 1977.

§ 143-369: Recodified as § 143B-74.3 by Session Laws 1977, c. 741, s. 8, effective July 1, 1977.

ARTICLE 40.

Advisory Commission for State Museum of Natural History.

§ 143-370. Commission created; membership. — There is hereby created an Advisory Commission for the Museum of Natural History which shall determine its own organization. It shall consist of at least nine members, which shall include the Director of the Museum of Natural History, the Commissioner of Agriculture, the State Geologist and Secretary of the Department of Natural Resources and Community Development, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three persons representing the East, the Piedmont, the Western areas of the State. Members appointed by the Governor shall serve for terms of two years with the first appointments to be made effective September 1, 1961. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of the Department of Natural and Economic Resources" for "State Forester of the Department of Conservation and Development."

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 41.

Science and Technology Research Center.

§§ 143-374 to 143-377: Recodified as §§ 143B-442 to 143B-445 by Session Laws 1977, c. 198, s. 26.

ARTICLE 42.

Board of Science and Technology.

§§ 143-378 to 143-383: Repealed by Session Laws 1973, c. 1262, s. 79, effective July 1, 1974.

Cross Reference. — As to the Science and Technology Committee, see §§ 143B-331, 143B-332.

ARTICLE 44.

North Carolina Traffic Safety Authority.

§ 143-392. Authority created; members. — There is hereby created the North Carolina Traffic Safety Authority, hereinafter called the Authority, which shall be composed of the following officials: the Commissioners of Agriculture, Insurance, Labor, and Motor Vehicles, the chairman of the Board of Transportation, the Superintendent of Public Instruction, the Secretary of Human Resources, the Attorney General, the chairman of the Industrial and Utilities Commissions, the President of the North Carolina Traffic Safety Council, Inc., and one member each from the Senate and House of Representatives to be appointed by the presiding officers thereof. The chairman of the Authority shall be the Secretary of Transportation. (1965, c. 541, s. 1; 1973, c. 476, s. 128; c. 507, s. 5; 1975, c. 716, s. 6.)

Cross Reference. — As to transfer of the North Carolina Traffic Safety Authority to the Department of Transportation, see § 143B-356.

Editor's Note. —

The 1975 amendment, effective July 1, 1975, deleted "the Governor, who shall be Chairman," immediately following the colon near the beginning of the first sentence, and added the second sentence.

ARTICLE 49.

North Carolina Human Relations Commission.

§§ 143-416 to 143-422: Repealed by Session Laws 1975, c. 879, s. 36, effective July 1, 1975.

Cross Reference. — For present provisions as to the North Carolina Human Relations Council, see §§ 143B-391, 143B-392.

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title. — This Article shall be known and may be cited as the Equal Employment Practices Act. (1977, c. 726, s. 1.)

Editor's Note. — Session Laws 1977, c. 726, s. 2, makes the act effective July 1, 1977.

§ 143-422.2. Legislative declaration. — It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general. (1977, c. 726, s. 1.)

§ 143-422.3. Investigations; conciliations. — The Human Relations Council in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. (1977, c. 726, s. 1.)

ARTICLE 50.

Commission on the Status of Women.

§§ 143-423 to 143-428: Repealed by Session Laws 1975, c. 879, s. 39, effective July 1, 1975.

Cross Reference. — For present provisions as to the Council on the Status of Women, see §§ 143B-393, 143B-394.

Editor's Note. — Session Laws 1975, c. 737, changed the title of the former Commission on the Education and Employment of Women to the Commission on the Status of Women.

ARTICLE 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-437. Pesticide Board; functions. — The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(8) To exempt any federal or State agency from any provision of this Article if it is determined by the Board that emergency conditions exist which require exemption. (1971, c. 832, s. 1; 1977, c. 199.)

Editor's Note. — The 1977 amendment added subdivision (8).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (8) are set out.

§ 143-439. Pesticide Advisory Committee; creation and functions.

(b) The Pesticide Advisory Committee shall consist of 17 members to be appointed by the Board, as follows: three practicing farmers; one conservationist

(at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife and/or biology; one member each representing the North Carolina Department of Agriculture, the North Carolina Department of Human Resources and a State conservation agency; one representative of a public utility or railroad company which uses pesticides, or of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; and one member of the general public (at large).

(1975, c. 824.)

Editor's Note. —

The 1975 amendment substituted "17 members" for "15 members" near the beginning of subsection (b) and added the language beginning "one member of the North Carolina Agricultural Aviation Association" at the end of that subsection.

As subsections (a) and (c) were not changed by the amendment, they are not set out.

Part 2. Regulation of the Use of Pesticides.

§ 143-442. Registration. — (a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(h) A pesticide may be registered by the Board for experimental use, including use to control wild bird or animal populations where the birds or animals in question have not yet been declared unprotected by the Wildlife Resources Commission, notwithstanding the provisions of G.S. Chapter 113, Article 7. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added "before January 1 for the ensuing calendar year" at the end of the first sentence of subsection (a) and added subsection (h).

As the rest of the section was not changed by the amendment, only subsections (a) and (h) are set out.

§ 143-443. Miscellaneous prohibited acts.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part,

any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) For any person to use any registered pesticide in a manner inconsistent with its labeling. (1971, c. 832, s. 1; 1975, c. 425, s. 3.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subdivision (2a) in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

Part 3. Pesticide Dealers and Manufacturers.

Repeal of Part. — This Part is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-449. Qualifications for pesticide dealer license; examinations. — (a) An applicant for a license must present evidence satisfactory to the Board concerning his qualifications for such license.

(1975, c. 425, s. 4.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted the former second sentence of subsection (a), which included subdivisions designated (1) and (2) and which set out the basic qualifications of an applicant.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143-451. Denial, suspension and revocation of license. — (a) The Board may suspend for not longer than 30 days, pending inquiry, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of any license issued under this Part, if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(2) Made a pesticide recommendation not in accordance with the label registered pursuant to this Article;

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(4) Failed to pay the original or renewal license fee when due, and continued to sell restricted-use pesticides without paying the license fee, or sold restricted-use pesticides without a license;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;
(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;
(7) Made false or fraudulent records, invoices, or reports;
(8) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license, or in selling or offering to sell restricted-use pesticides;
(9) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
(10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
(11) Impersonated any state, county, or city inspector or official;
(12) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(1975, c. 425, ss. 6, 7.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "30 days" for "10 days" near the beginning of the introductory paragraph of subsection (a) and inserted "or presented false information" in subdivision (8) of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

Part 4. Pesticide Applicators and Consultants.

Repeal of Part. — This Part is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-452. Licensing of pesticide applicators; fees.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business.

(1977, c. 100.)

Editor's Note.—

The 1977 amendment substituted, at the end of subsection (g), "must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business" for "shall have ninety days from such sale or transfer, or until the next meeting of the Board following the expiration of said 90-day period, to have a qualified licensee to operate said business."

§ 143-453. Qualifications for pesticide applicator's license; examinations.

— (a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed. Those

qualifications, in the case of a pilot, shall include at least 100 hours flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 100 hours experience as a pilot in the field of aerial pesticide application may be licensed as an apprentice aerial pesticide applicator pilot provided that all aerial applications of pesticide by such licensed aerial pesticide applicator apprentice is conducted under the direction and supervision of a licensed pesticide applicator pilot.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) Provide for license renewal examinations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, made changes in subsection (a) as it stood before the 1977 amendment and added the language beginning "or more frequently" at the end of subdivision (2) of subsection (c).

The 1977 amendment rewrote subsection (a). As subsection (b) was not changed by the amendments, it is not set out.

§ 143-455. Pest control consultant license.

(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in publications recognized by the Board as appropriate for a specific consulting classification or subclassification. (1975, c. 425, s. 10.)

Editor's Note. — The 1975 amendment, effective Jan. 1, 1976, rewrote that part of subsection (b) following the first sentence.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 143-456. Denial, suspension and revocation of license. — (a) The Board may suspend for not longer than 30 days pending inquiry by the Commissioner, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provisions of any license issued under this Part if it finds that the applicant or licensee or his registered employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

(3) Operated faulty or unsafe equipment;

(4) Operated in a faulty, careless, or negligent manner;

(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;
(7) Made false or fraudulent records, invoices, or reports;
(8) Operated unlicensed equipment;
(9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;
(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
(11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
(12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
(13) Impersonated any state, county, or city inspector or official;
(14) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations;
(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

(1975, c. 425, ss. 6, 8.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "30 days" for "10 days" near the beginning of the introductory paragraph of subsection (a) and inserted "or presented false information" in subdivision (9) of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

Part 5. General Provisions.

§ 143-460. Definitions. — As used in this Article, unless the context otherwise requires:

(29) "Pesticide applicator" includes any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands or properties of another; any public operator; any private golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who acts as a pesticide applicator and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person regulated by the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

(1975, c. 425, s. 11.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "includes" for "means" near the beginning of the first sentence of subdivision (29), inserted "or properties" near the middle of that sentence and added at the end of that sentence the language beginning "any public operator," deleted "includes public operators, but" following "It" at the beginning of the second sentence of subdivision (29) and rewrote paragraph a of subdivision (29).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (29) are set out.

§ 143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations.

(e) All official acts of the Board which have or are intended to have general application effect shall be incorporated either in the Board's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Board be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Attorney General. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Board in sufficient numbers to satisfy all reasonable requests therefor. (1971, c. 832, s. 1; 1975, 2nd Sess., c. 983, s. 84.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "Attorney General" for "Secretary of State" at the end of the second sentence in subsection (e) and deleted the former last sentence of subsection (e), which required the Board to codify its regulations and rules and from time to time to bring its codifications up to date.

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

ARTICLE 53.

North Carolina Drug Authority.

§§ 143-471 to 143-475: Repealed by Session Laws 1975, c. 879, s. 18, effective July 1, 1975.

Cross Reference. — As to the creation and organization of the North Carolina Drug Commission, see §§ 143B-377, 143B-378.

§ 143-475.1. State Drug Education Program.

Editor's Note. — Session Laws 1975, c. 879, s. 18, effective July 1, 1975, repealed "Article 53 of Chapter 143 of the General Statutes of North Carolina being Sections 143-471 through 143-475."

ARTICLE 54.

North Carolina Council on State Goals and Policy Act.

§§ 143-476 to 143-482: Repealed by Session Laws 1975, c. 879, s. 9, effective July 1, 1975.

Cross Reference. — As to the State Goals and Policy Board, see §§ 143B-371, 143B-372.

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-508. Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission. — The State

Department of Human Resources shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

The North Carolina Medical Care Commission is authorized and directed to adopt rules and regulations to carry out the purpose of this Article and Article 26 of Chapter 130 of the General Statutes of North Carolina. Such rules and regulations shall be adopted with the advice of the Emergency Medical Services Advisory Council. All rules and regulations not inconsistent with the provisions of this Article heretofore adopted by the State Board of Health or the Commission for Health Services shall remain in full force and effect until repealed or superseded by action of the North Carolina Medical Care Commission. (1973, c. 208, s. 2; c. 1224, s. 2.)

Editor's Note. — The 1973 amendment added the second paragraph of the section.

§ 143-510. Emergency Medical Services Advisory Council. — (a) There is hereby created an Emergency Medical Services Advisory Council composed of 21 members to consult with the Secretary of the Department of Human Resources in the administration of this article. The Secretary of the Department of Human Resources shall appoint 17 members with at least one member representing each of the following categories:

(1) Physicians licensed to practice medicine versed in treatment of trauma and suddenly occurring illnesses,
(2) Emergency room nurses,
(3) Hospitals,
(4) Providers of ambulance service (including rescue squads),
(5) Local government, and
(6) The general public.

The Lieutenant Governor shall appoint two members from the Senate, and the Speaker of the House of Representatives shall appoint two members from the House of Representatives.

(b) Members appointed by the Secretary of the Department of Human Resources shall hold office for a term of four years beginning July 1, 1973, and quadrennially thereafter, except the terms of the members first taking office shall expire, as designated at the time of appointment, six at the end of the second year, six at the end of the third year, and five at the end of the fourth year. Members appointed by the Lieutenant Governor and the Speaker shall serve for two years coinciding with the term for which they were elected to the General Assembly. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only.

(c) The Council shall meet at least once each quarter and at the call of the Secretary of the Department of Human Resources. The Council shall elect its chairman annually.

(d) Council members who are not members of the General Assembly or State employees or officers shall receive per diem, travel, and subsistence as provided by G.S. 138-5 while engaged in Council business or attending Council meetings. Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided by G.S. 120-3.1. Council members who are State employees or officers shall receive travel and subsistence as provided by G.S. 138-6. (1973, c. 208, s. 4; 1977, c. 509.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 143-514. Training programs; utilization of emergency services personnel. — The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. Upon successful completion of such training programs and other programs approved by the Board of Medical Examiners of the State of North Carolina, emergency medical services personnel may, in the course of their emergency medical services duties, perform such acts, tasks and functions as they have been trained to perform and as provided in rules and regulations of such Board, regardless of other provisions of law. (1973, c. 208, s. 8; c. 1121.)

Editor's Note. — The 1973 amendment added the second sentence.

ARTICLE 57.

Crime Study Commission.

§§ 143-527 to 143-531: Reserved for future codification purposes.

ARTICLE 58.

Committee on Inaugural Ceremonies.

§ 143-532. Definitions. — For the purposes of this Article:

(1) The term "inaugural period" means the period which includes the day on which the ceremony inaugurating the Governor is held, the seven calendar days immediately preceding such day, and the seven calendar days immediately subsequent to such day; and

(2) The term "inaugural planning period" means the period beginning July 1 of the year in which the Governor is elected and ending the last day in the inaugural period. (1975, c. 816.)

§ 143-533. Creation, appointment of members; members ex officio. — There is hereby created a Committee on Inaugural Ceremonies to consist of three representatives to be appointed by the Speaker of the House, three senators to be appointed by the President of the Senate, three citizens to be appointed by the Governor, and three citizens to be appointed by the Governor-elect upon certification of his election. Of the three citizens appointed to the Committee by the Governor, only two may be of the same political party. The Speaker of the House, the President of the Senate, the Governor, and, upon certification of their election, all members-elect of the Council of State, shall be ex officio members of the Committee on Inaugural Ceremonies. (1975, c. 816.)

§ 143-534. Time of appointments; terms of office. — Appointments to the Committee on Inaugural Ceremonies shall be made on or before July 1 of years in which there is an election of the Governor. The term of office of the Committee members, the Speaker of the House, the President of the Senate and the Governor who are members ex officio, shall begin on the first day of the inaugural planning period, and shall end on the last day of the inaugural period. The term of office of the members-elect of the Council of State, who are ex officio members of the Committee, shall begin upon certification of their election, and shall end on the last day of the inaugural period. (1975, c. 816.)

§ 143-535. Vacancies. — Vacancies in the appointive membership of the Committee on Inaugural Ceremonies occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Committee. A legislative vacancy on the Committee shall be filled by a member of the same house in which the vacancy occurred. (1975, c. 816.)

§ 143-536. Chairman; rules of procedure; quorum. — At its first meeting the Committee on Inaugural Ceremonies shall, by majority vote, elect a chairman from within the Committee membership. There shall also be a vice-chairman who shall be designated by the Governor-elect from among his appointees on the Committee who shall assume his duties upon appointment. The chairman, and in his absence the vice-chairman, shall preside over meetings of the Committee. The Committee shall adopt rules of procedure governing its meetings. Six members, excluding ex officio members, shall constitute a quorum of the Committee. (1975, c. 816.)

§ 143-537. Meetings. — The first meeting of the Committee on Inaugural Ceremonies shall be held during the inaugural planning period at the call of the President of the Senate. Thereafter the Committee shall meet at the call of the chairman. (1975, c. 816.)

§ 143-538. Powers and duties. — During the inaugural planning period the Committee on Inaugural Ceremonies shall plan and sponsor official parades, swearing-in ceremonies and other formal occasions connected with the swearing-in and installation of the Governor and other members of the Council of State. Throughout the inaugural planning period the Committee shall consult with and remain in close contact with the Governor-elect and all of the other members-elect of the Council of State upon certification of their election. Balls, dinners, testimonials, parties and other informal occasions shall be coordinated with official events by the Committee; however, nothing in this Article shall preclude any group or person from conducting private events during the inaugural period. (1975, c. 816.)

§ 143-539. Offices; per diem and allowances of members; payments from appropriations. — The facilities of the State Legislative Building shall be made available to the Committee on Inaugural Ceremonies by the Legislative Services Officer for the Committee's work. The members of the Committee, including ex officio members, shall be paid such per diem, subsistence and travel allowances as are prescribed by law for State boards and commissions generally. All payments for purposes authorized by this Article shall be paid by the State Treasurer upon written authorization of the chairman of the Committee, from funds appropriated to the Contingency and Emergency Budget. (1975, c. 816.)

Chapter 143A.

State Government Reorganization.

Article 1.

General Provisions.

Sec.
143A-6. Types of transfers.

Article 2.

Department of the Secretary of State.

143A-22. [Repealed.]

Article 6.

Department of Justice.

143A-52. Fire investigations; transfer.
143A-55.1. North Carolina Criminal Justice Training and Standards Council; transfer.

Article 10.

Department of Administration.

143A-80 to 143A-96. [Repealed.]
143A-96.1. Transfer of Department of Veterans Affairs.

Article 11.

Department of Transportation and Highway Safety.

143A-97 to 143A-108. [Repealed.]

Article 12.

Department of Natural and Economic Resources.

143A-109 to 143A-129. [Repealed.]

Article 14.

Department of Social Rehabilitation and Control.

Sec.
143A-163 to 143A-170. [Repealed.]

Article 15.

Department of Commerce.

143A-171 to 143A-180. [Repealed.]
143A-180.1, 143A-180.2. [Recodified.]
143A-181. [Recodified.]
143A-182 to 143A-185.1. [Repealed.]

Article 19.

Transfers to Department of Crime Control and Public Safety.

143A-239. North Carolina national guard.
143A-240. North Carolina Civil Preparedness Agency.
143A-241. State Civil Air Patrol.
143A-242. State Highway Patrol.
143A-243. State Board of Alcoholic Control Enforcement Division.
143A-244. Governor's Crime Commission.
143A-245. Crime Control Division.

ARTICLE 1.

General Provisions.

§ 143A-6. Types of transfers.

(b) Under this Chapter, a type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this Chapter. When any agency, or part thereof, is transferred to a principal department under a type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a type II transfer the management functions of any transferred agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

Editor's Note. — Subsection (b) is set out to correct a typographical error in the replacement volume.

As subsections (a) and (c) were not affected, they are not set out.

ARTICLE 2.

Department of the Secretary of State.

§ 143A-22: Repealed by Session Laws 1973, c. 1409, s. 1.

ARTICLE 6.

Department of Justice.

§ 143A-52. Fire investigations; transfer. — The duties of the Commissioner of Insurance with respect to the investigation of all fires, including forest fires, as contained in Article 1 of Chapter 69 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Justice; provided, however, that the duties of the Commissioner of Insurance with respect to the inspection of buildings, the removal of dangerous materials therefrom, hospital insurance, insurance regulation, and the preparation of annual reports, as contained in Chapters 57 and 58 of the General Statutes and G.S. 69-4, shall continue to be among the duties of the Commissioner of Insurance. (1971, c. 864, s. 8; 1977, c. 596, s. 3.)

Editor's Note. — The 1977 amendment deleted "and G.S. 69-6" following "G.S. 69-4" near the end of the section.

§ 143A-55.1. North Carolina Criminal Justice Training and Standards Council; transfer. — The North Carolina Criminal Justice Training and Standards Council, as created by Chapter 17A of the General Statutes and laws of this State, is hereby transferred by a Type II transfer to the Department of Justice. (1975, c. 372, s. 1.)

ARTICLE 10.

Department of Administration.

§§ 143A-80 to 143A-96: Repealed by Session Laws 1975, c. 879, s. 46, effective July 1, 1975.

Cross Reference. — For present provisions as to the Department of Administration, see § 143B-366 et seq.

§ 143A-96.1. Transfer of Department of Veterans Affairs. — The Division of Veterans Affairs of the Department of Military and Veterans Affairs as described in Article 5 of Chapter 143B is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Administration. The Secretary of Administration is hereby empowered and directed to employ within the Department of Administration an additional assistant secretary as Assistant Secretary for Veterans Affairs. (1977, c. 70, s. 26.)

Editor's Note. — Session Laws 1977, c. 70, s. 37, makes this section effective April 1, 1977.

ARTICLE 11.

Department of Transportation and Highway Safety.

§§ 143A-97 to 143A-108: Repealed by Session Laws 1975, c. 716, s. 5, effective July 1, 1975.

Cross Reference. — For present provisions as to the Department of Transportation, see § 143B-345 et seq.

Editor's Note. — Repealed § 143A-98.1 was amended by Session Laws 1975, c. 19, s. 55.

ARTICLE 12.

Department of Natural and Economic Resources.

§§ 143A-109 to 143A-129: Repealed by Session Laws 1973, c. 1262, s. 86, effective July 1, 1974.

Cross Reference. — For present provisions as to the Department of Natural and Economic Resources, see § 143B-275 et seq.

ARTICLE 14.

Department of Social Rehabilitation and Control.

§§ 143A-163 to 143A-170: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

Cross Reference. — As to transfer of the functions of the Department of Social Rehabilitation and Control to the Department of Correction, see § 143B-262.

ARTICLE 15.

Department of Commerce.

§§ 143A-171 to 143A-180: Repealed by Session Laws 1977, c. 198, s. 25.

§§ 143A-180.1, 143A-180.2: Recodified as §§ 143B-448, 143B-449 by Session Laws 1977, c. 198, s. 26.

§ 143A-181: Recodified as § 143B-439 by Session Laws 1977, c. 198, s. 26.

§§ 143A-182 to 143A-185.1: Repealed by Session Laws 1977, c. 198, s. 25.

Editor's Note. — Repealed § 143A-185.1 was enacted by Session Laws 1977, c. 65, s. 5.

ARTICLE 19.

Transfers to Department of Crime Control and Public Safety.

§ 143A-239. North Carolina national guard. — The North Carolina national guard as provided for in Chapter 127A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Session Laws 1977, c. 70, s. 37, makes this Article effective April 1, 1977.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143A-240. North Carolina Civil Preparedness Agency. — The State Civil Preparedness Agency as provided for in Chapter 166 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-241. State Civil Air Patrol. — The State Civil Air Patrol as provided for in G.S. 167-2 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-242. State Highway Patrol. — The State Highway Patrol as provided for in Article 4 of Chapter 20 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-243. State Board of Alcoholic Control Enforcement Division. — The State Board of Alcoholic Control Enforcement Division as provided for in Part 2 of Article 2 of Chapter 18A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-244. Governor's Crime Commission. — The Governor's Crime Commission as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type II transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-245. Crime Control Division. — The Crime Control Division, Department of Natural and Economic Resources, as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

General Provisions.

Sec.
143B-2. Interim applicability of the Executive Organization Act of 1973.
143B-6. Principal departments.
143B-9. Appointment of officers and employees.
143B-10. Powers and duties of heads of principal departments.
143B-13. Appointment, qualifications, terms, and removal of members of commissions.
143B-14. Administrative services to commissions.

Article 2.

Department of Cultural Resources.

Part 4. North Carolina Historical Commission.

143B-62. North Carolina Historical Commission — creation, powers and duties.
143B-63. Historical Commission — members; selection; quorum; compensation.

Part 5. Archaeological Advisory Committee.

143B-66. Archaeological Advisory Committee — members; selection; compensation; terms; removal; vacancies.

Part 8. U.S.S. North Carolina Battleship Commission.

143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties.
143B-73.1. U.S.S. North Carolina Battleship Commission — duties.
143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation.
143B-74.1. U.S.S. North Carolina Battleship Commission — funds.
143B-74.2. U.S.S. North Carolina Battleship Commission — employees.
143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest.

Part 13. America's Four Hundredth Anniversary Committee.

143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties.

Part 15. North Carolina Art Society, Incorporated.

143B-89. North Carolina Art Society, Incorporated.

Part 23. John Motley Morehead Memorial Commission.

Sec.
143B-116 to 143B-120. [Reserved.]

Part 24. Grassroots Arts Program.

143B-121. Program established.
143B-122. Distribution of funds.
143B-123. Rules and procedures; standards for qualification for funds.
143B-124. Designation of organization as official distributing agent; duties.
143B-125. Disposition of funds for counties without organizations meeting Department standards.

Article 3.

Department of Human Resources.

Part 1. General Provisions.

143B-137. Department of Human Resources — duties.
143B-139.1. Department of Human Resources — head — to establish rules and regulations applicable to local human resource agencies.
143B-139.2. Department of Human Resources — head — requests for grants-in-aid from non-State agencies.
143B-140. Department of Human Resources — organization.

Part 3. Commission for Health Services.

143B-142. Commission for Health Services — creation, powers and duties.
143B-143. Commission for Health Services — members; selection; quorum; compensation.

Part 4. Commission for Mental Health and Mental Retardation Services.

143B-147. Commission for Mental Health and Mental Retardation Services — creation, powers and duties.
143B-148. Commission for Mental Health and Mental Retardation Services — members; selection; quorum; compensation.
143B-149. Commission for Mental Health and Mental Retardation Services — officers.
143B-150. Commission for Mental Health and Mental Retardation Services — regular and special meetings.

Part 5. Eugenics Commission.

Sec.

143B-151, 143B-152. [Repealed.]

Part 6. Social Services Commission.

143B-153. Social Services Commission — creation, powers and duties.

143B-154. Social Services Commission — members; selection; quorum; compensation.

Part 7. Commission for the Blind.

143B-158. Commission for the Blind — members; selection; quorum; compensation.

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties.

143B-164. Consumer and Advocacy Advisory Committee for the Blind — members; selection; quorum; compensation.

Part 10. North Carolina Medical Care Commission.

143B-165. North Carolina Medical Care Commission — creation, powers and duties.

143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation.

143B-167. North Carolina Medical Care Commission — regular and special meetings.

143B-168. North Carolina Medical Care Commission — officers.

Part 11. Council for Institutional Boards.

143B-170. Council for Institutional Boards — members; selection; quorum; compensation.

Part 12. Boards of Directors of Institutions.

143B-173. Boards of directors of institutions — creation, powers and duties.

143B-174. Boards of directors of institutions — members; selection; quorum; compensation.

Part 13. Council on Developmental Disabilities.

143B-178. Council on Developmental Disabilities — definitions.

143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

Sec.

143B-180. Governor's Advisory Council on Aging — creation, powers and duties.

143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation.

143B-181.1. Division of Aging — creation, powers and duties.

143B-181.2. Assistant Secretary for Aging — appointment and duties.

Part 15. Mental Health Advisory Council.

143B-182. Mental Health Advisory Council — creation, powers and duties.

143B-183. Mental Health Advisory Council — members; selection; quorum; compensation.

Part 16. Governor's Council on Employment of the Handicapped.

143B-184, 143B-185. [Transferred.]

Part 17. Governor's Advocacy Council on Children and Youth.

143B-186, 143B-187. [Transferred.]

Part 19. Commission for Human Skills and Resource Development.

143B-197. Legislative intent.

143B-198. Creation.

143B-199. Membership; appointment; terms; vacancies.

143B-200. Appointment of Commission staff.

143B-201. Power to make rules, enter contracts and accept gifts.

143B-202. Authority to receive grants-in-aid.

143B-203. Compensation of members.

Part 20. Commission of Anatomy.

143B-204. Commission of Anatomy — creation; powers and duties.

143B-205. Commission of Anatomy — members; selection; term; chairman; quorum; meetings.

143B-206. Commission of Anatomy — reference to former Board of Anatomy in testamentary disposition.

Part 21. Youth Services Advisory Committee.

143B-207. Committee created; duties.

143B-208. Composition of Committee; terms; vacancies; meetings; expenses, etc.

Part 22. Human Tissue Advisory Council.

143B-209. Creation of Council; composition; duties; meetings, etc.

Part 23. North Carolina Drug Commission.

Sec.

143B-210. North Carolina Drug Commission — creation; powers and duties.
143B-211. North Carolina Drug Commission — review of programs; State Plan for Drug Abuse Prevention.
143B-212. North Carolina Drug Commission — members; selection; quorum; compensation.

Part 24. North Carolina Council for the Hearing Impaired.

143B-213. North Carolina Council for the Hearing Impaired — responsibilities of Council.
143B-214. North Carolina Council for the Hearing Impaired — members.
143B-215. North Carolina Council for the Hearing Impaired — chairman; reimbursement of members.
143B-216. North Carolina Council for the Hearing Impaired — State Coordinator; duties.
143B-216.1. North Carolina Council for the Hearing Impaired — annual report.
143B-216.2. North Carolina Council for the Hearing Impaired — assistance of other agencies.
143B-216.3. North Carolina Council for the Hearing Impaired — plan for community services for hearing impaired.
143B-216.4. North Carolina Council for the Hearing Impaired — functions of service centers.
143B-216.5. North Carolina Council for the Hearing Impaired — receipt of moneys.

Part 25. Nutrition Advisory Committee.

143B-216.6. Nutrition Advisory Committee — appointment; terms; vacancies; per diem, etc.; chairman.
143B-216.7. Nutrition Advisory Committee — duties and powers.

Article 5.

Department of Military and Veterans Affairs.

Part 1. General Provisions.

143B-246 to 143B-251. [Repealed.]

Part 2. Veterans Affairs Commission.

143B-252, 143B-253. [Transferred.]

Part 3. Energy Division.

Sec.

143B-254, 143B-255. [Repealed.]
143B-256 to 143B-259. [Reserved.]

Article 6.

Department of Correction.

Part 1. General Provisions.

143B-260. Department of Correction — creation.
143B-261. Department of Correction — duties.
143B-261.1. Department of Correction — rules and regulations.
143B-262. Department of Correction — functions.
143B-263. Department of Correction — head.
143B-264. Department of Correction — organization.

Part 2. Board of Correction.

143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services.

Part 3. Parole Commission.

143B-266. Parole Commission — creation, powers and duties.
143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services.
143B-268 to 143B-274. [Reserved.]

Article 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

143B-275. Department of Natural Resources and Community Development — creation.
143B-276. Department of Natural Resources and Community Development — duties.
143B-277. Department of Natural Resources and Community Development — functions.
143B-278. Department of Natural Resources and Community Development — head.
143B-279. Department of Natural Resources and Community Development — organization.

Part 2. Board of Natural Resources and Community Development.

143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services.

Part 3. Wildlife Resources Commission.

Sec.

143B-281. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees.

Part 4. Environmental Management Commission.

143B-282. Environmental Management Commission — creation; powers and duties.

143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services.

143B-284. Environmental Management Commission — officers.

143B-285. Environmental Management Commission — meetings.

Part 5. Marine Fisheries Commission.

143B-286. Marine Fisheries Commission — creation; powers and duties.

143B-287. Marine Fisheries Commission — members; selection; removal; compensation; quorum; services.

143B-288. Marine Fisheries Commission — officers.

143B-289. Marine Fisheries Commission — meetings.

Part 6. North Carolina Mining Commission.

143B-290. North Carolina Mining Commission — creation; powers and duties.

143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.

143B-292. North Carolina Mining Commission — officers.

143B-293. North Carolina Mining Commission — meetings.

Part 7. Soil and Water Conservation Commission.

143B-294. Soil and Water Conservation Commission — creation; powers and duties.

143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services.

143B-296. Soil and Water Conservation Commission — officers.

143B-297. Soil and Water Conservation Commission — meetings.

Part 8. Sedimentation Control Commission.

143B-298. Sedimentation Control Commission — creation; powers and duties.

Sec.

143B-299. Sedimentation Control Commission — members; selection; compensation; meetings.

Part 9. Wastewater Treatment Plant Operators Certification Commission.

143B-300. Wastewater Treatment Plant Operators Certification Commission — creation; powers and duties.

143B-301. Wastewater Treatment Plant Operators Certification Commission — members; selection; removal; compensation; quorum; services.

Part 10. Earth Resources Council.

143B-302. Earth Resources Council — creation; powers and duties.

143B-303. Earth Resources Council — members; chairman; selection; removal; compensation; quorum; services.

143B-304. Earth Resources Council — meetings.

Part 11. Community Development Council.

143B-305. Community Development Council — creation; powers and duties.

143B-306. Community Development Council — members; chairman; selection; removal; compensation; quorum; services.

143B-307. Community Development Council — meetings.

Part 12. Forestry Council.

143B-308. Forestry Council — creation; powers and duties.

143B-309. Forestry Council — members; chairman; selection; removal; compensation; quorum; services.

143B-310. Forestry Council — meetings.

Part 13. Parks and Recreation Council.

143B-311. Parks and Recreation Council — creation; powers and duties.

143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services.

143B-313. Parks and Recreation Council — meetings.

Part 14. North Carolina Water Safety Council.

143B-314. North Carolina Water Safety Council — creation; powers and duties.

143B-315. North Carolina Water Safety Council — members; officers; selection; removal; compensation; quorum; services.

Sec.
143B-316. North Carolina Water Safety Council — meetings.

Part 15. Air Quality Council.

143B-317. Air Quality Council — creation; powers and duties.
143B-318. Air Quality Council — members; chairman; selection; removal; compensation; quorum; services.
143B-319. Air Quality Council — meetings.

Part 16. Water Quality Council.

143B-320. Water Quality Council — creation; powers and duties.
143B-321. Water Quality Council — members; chairman; selection; removal; compensation; quorum; services.

Part 17. North Carolina National Park, Parkway and Forests Development Council.

143B-322 to 143B-324. [Recodified.]

Part 18. Commercial and Sports Fisheries Advisory Committee.

143B-325. Commercial and Sports Fisheries Advisory Committee — creation, powers and duties.
143B-326. Commercial and Sports Fisheries Advisory Committee — members; chairman; selection; removal; compensation; quorum; services.
143B-327. Commercial and Sports Fisheries Advisory Committee — meetings.

Part 19. John H. Kerr Reservoir Committee.

143B-328. John H. Kerr Reservoir Committee — creation; powers and duties.
143B-329. John H. Kerr Reservoir Committee — members; chairman; selection; removal; compensation; quorum; services.
143B-330. John H. Kerr Reservoir Committee — meetings.

Part 20. Science and Technology Committee.

143B-331, 143B-332. [Recodified.]

Part 21. North Carolina Trails Committee.

143B-333. North Carolina Trails Committee — creation; powers and duties.
143B-334. North Carolina Trails Committee — members; selection; removal; compensation.

Part 22. North Carolina Zoological Park Council.

143B-335. North Carolina Zoological Park Council — creation; powers and duties.

Sec.
143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services.

Part 23. Governor's Law and Order Commission.

143B-337. Governor's Law and Order Commission — creation; composition; terms; meetings, etc.
143B-338. Governor's Law and Order Commission — powers and duties.
143B-339. Law and Order Section of Department of Natural Resources and Community Development.

Part 24. North Carolina Employment and Training Council.

143B-340. North Carolina Employment and Training Council — creation; duties and responsibilities.
143B-341. North Carolina Employment and Training Council — structure; staff support; related councils.
143B-342 to 143B-344. [Reserved.]

Article 8.

Department of Transportation.

Part 1. General Provisions.
143B-345. Department of Transportation — creation.
143B-346. Department of Transportation — purpose and functions.
143B-347. [Repealed.]
143B-348. Department of Transportation — head; rules, regulations, etc., of Board of Transportation.
143B-349. [Repealed.]

Part 2. Board of Transportation — Secondary Roads Council.

143B-350. Board of Transportation — organization; powers and duties, etc.
143B-351, 143B-352. [Repealed.]

Part 3. North Carolina State Ports Authority Transfer.

143B-353. [Repealed.]

Part 4. Navigation and Pilotage Commissions.

143B-354. [Recodified.]

Part 5. Division of Aeronautics — Aeronautics Council.

143B-355. Division of Aeronautics.
143B-356. Aeronautics Council — creation; powers and duties.
143B-357. Aeronautics Council — members; selection; quorum; compensation.

Part 6. North Carolina Railroad and Atlantic Railroad.

Sec.
143B-358. North Carolina Railroad and Atlantic and North Carolina Railroad.

Part 7. North Carolina Traffic Safety Authority.

143B-359. North Carolina Traffic Safety Authority.

Part 8. Highway Safety Program.

143B-360. Powers and duties of Department and Secretary.
143B-361 to 143B-365. [Reserved.]

Article 9.

Department of Administration.

Part 1. General Provisions.

143B-366. Department of Administration — creation.
143B-367. Duties of the Department.
143B-368. Functions of the Department.
143B-369. Head of the Department.
143B-370. Organization of the Department.

Part 2. State Goals and Policy Board.

143B-371. State Goals and Policy Board — creation; powers and duties.
143B-372. State Goals and Policy Board — members; selection; quorum; compensation.

Part 3. North Carolina Capital Planning Commission.

143B-373. North Carolina Capital Planning Commission — creation; powers and duties.
143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation.

Part 4. Child Day-Care Licensing Commission.

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Part 6. North Carolina Council on Interstate Cooperation.

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143B-395, 143B-396. [Repealed.]

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Article 10.

Department of Commerce.

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Sec.
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Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

143B-473. Department of Crime Control and Public Safety — creation.
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Sec.
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ARTICLE 1.

General Provisions.

§ 143B-1. Short title.

Cross Reference. — As to effect of this Article on Article 8, § 143B-345 et seq., of this Chapter, see § 143B-350.

§ 143B-2. Interim applicability of the Executive Organization Act of 1973. — The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Human Resources
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Natural Resources and Community Development
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce. (1973, c. 476, s. 2; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 22; c. 198, s. 21; c. 771, s. 4.)

Editor's Note. — Session Laws 1973, c. 1262, ss. 10, 86, effective July 1, 1974, added subdivisions (5) and (6).

The first 1975 amendment, effective July 1, 1975, added subdivision (7).

The second 1975 amendment, effective July 1, 1975, added subdivision (8).

The first 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subdivision (4).

The second 1977 amendment added subdivision (9).

The third 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources" in subdivision (6).

Session Laws 1977, c. 70, s. 34, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-6. Principal departments. — In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Human Resources
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Natural Resources and Community Development
(7) Department of Transportation
(8) Department of Administration

(9) Department of Commerce. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 23; c. 198, s. 22; c. 771, s. 4.)

Editor's Note. — Session Laws 1973, c. 1262, ss. 23, 86, effective July 1, 1974, added subdivisions (5) and (6).

The first 1975 amendment, effective July 1, 1975, added subdivision (7).

The second 1975 amendment, effective July 1, 1975, added subdivision (8).

The first 1977 amendment, effective April 1, 1977, substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subdivision (4).

The second 1977 amendment added subdivision (9).

The third 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources" in subdivision (6).

Session Laws 1977, c. 70, s. 34, c. 198, s. 31, and c. 771, c. 22, contain severability clauses.

§ 143B-9. Appointment of officers and employees. — The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments, except in those departments headed by popularly elected officers, shall upon the recommendation of the Governor, be set by the General Assembly; provided, however, that the Governor may with approval of the Advisory Budget Commission increase or decrease the salary of a new appointee by a maximum of twenty percent (20%) over or under the authorized salary of the appointee's immediate predecessor without action of the General Assembly, except that in the case of the Secretary of the Department of Human Resources, when such new appointee is a licensed physician, the salary may be set at a level comparable to that of physicians employed by the department. The salaries of elected officials shall be as prescribed by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department. (1973, c. 476, s. 9; 1977, c. 802, s. 42.20.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added the proviso to the first sentence of the second paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

The provisions of G.S. 126-5(b) control over the provisions of G.S. 143B-9. — See Opinion of the Attorney General to Mr. G. C. Davis, Jr., Director, Position Analysis Division, Office of State Personnel, 46 N.C.A.G. 148 (1976).

§ 143B-10. Powers and duties of heads of principal departments.

(b) Reorganization by Department Heads. — With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. The members of any committee or council created by the head of a principal department shall serve

at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved by the Advisory Budget Commission.

(1973, c. 1416, ss. 1, 2.)

Editor's Note. — The 1973 amendment added the third sentence to subsection (b) and added "when approved by the Advisory Budget Commission" at the end of the second sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b) and (d) are set out.

§ 143B-13. Appointment, qualifications, terms, and removal of members of commissions.

(c) No member of any State commission may: (i) use his position to influence any election or the political activity of any person, (ii) serve as a member of the campaign committee of any political party, (iii) interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or (iv) be in any manner concerned with the demanding, soliciting, or receiving of any assessments, subscriptions, or contributions, whether voluntary or involuntary, to any political party or candidate. Any commission member who shall violate any of the provisions of this section shall be subject to dismissal from office by the Governor.

The provisions of this subsection shall not apply to ex officio members of a commission whose membership on a commission is the result of being a member of the Council of State, the General Assembly or other elected office.

(1975, c. 879, s. 47.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added the second paragraph of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 143B-14. Administrative services to commissions.

(c) The Governor may assign to an appropriate commission created by the Executive Organization Act of 1973 duties of a quasi-legislative and quasi-judicial nature existing in the executive branch of State government which have not been assigned by this Chapter to any other commission. All such assignment of duties by the Governor to a commission shall be made in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(1973, c. 1416, s. 3.)

Editor's Note. — The 1973 amendment deleted "by an executive order which has the force and effect of law upon issuance but must be submitted to the General Assembly" following "shall be made" in the second sentence of subsection (c). The amendatory act directed that the words be struck from "lines 5 and 6" of the subsection. In fact, the quoted language extended into line 7.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-51. Functions of the Department.

Cross Reference. — As to allotments from the Contingency and Emergency Fund of the State to outdoor historical dramas, see § 143-204.8.

Part 3. Art Museum Building Commission.

§ 143B-58. Art Museum Building Commission — creation, powers and duties.

Commission Included within § 129-42.1. — Since the Art Museum Building Commission proposes to construct a museum at the present site of the Polk Prison, which is within the environs of the City of Raleigh, the Commission is among the State agencies included within § 129-42.1. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

But This Section Controls. — If the Art Museum Building Commission is brought within Chapter 129, Article 7, there is an obvious conflict between § 129-42 conferring upon the Authority the power to select and employ architects and other consultants and this section conferring that power upon the Commission, but this section, being the specific statute, it controls. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

And Also Included within Executive Budget Act. — There is nothing in the Executive Budget Act or this section which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of the Executive Budget Act. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Approval of Subsequent Governors and Councils Not Required. — There is nothing in subdivision (1) to suggest that, having obtained the approval of the Governor and Council of State then in office, the Commission must continue to seek and obtain the approval of each succeeding Governor and Council of State taking office prior to the completion of the museum building. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties. — There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(1) The Historical Commission shall have the following powers and duties:
   a. To advise the Secretary of Cultural Resources on the scholarly editing, writing, and publication of historical materials to be issued under the name of the Department;
   b. To evaluate and approve proposed nominations of historic, archaeological, architectural, or cultural properties for entry on the National Register of Historic Places;
   c. To evaluate and approve the State plan for historic preservation as provided for in Chapter 121;
   d. To evaluate and approve historic, archaeological, architectural, or cultural properties proposed to be acquired and administered by the State;
   e. To evaluate and prepare a report on its findings and recommendations concerning any property not owned by the State for which State aid or appropriations are requested, and to submit its findings and recommendations in accordance with Chapter 121;
   f. To serve as an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, particularly by evaluating and making recommendations concerning any State undertaking which may affect a property that has been entered on the National Register of Historic Places as provided for in Chapter 121 of the General Statutes of North Carolina;

g. To exercise any other powers granted to the Commission by provisions of Chapter 121 of the General Statutes of North Carolina;

h. To give its professional advice and assistance to the Secretary of Cultural Resources on any matter which the Secretary may refer to it in the performance of the Department's duties and responsibilities provided for in Chapter 121 of the General Statutes of North Carolina;

i. To serve as a search committee to seek out, interview, and recommend to the Secretary of Cultural Resources one or more experienced and professionally trained historian(s) for the position of Director of the Division of Archives and History when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Director and the Division; and

j. To assist and advise the Secretary of Cultural Resources and the Director of the Division of Archives and History in the development and implementation of plans and priorities for the State's historical programs.

(1977, c. 513, s. 2.)

Editor's Note. — The 1977 amendment added paragraphs i and j of subdivision (1). As subdivisions (2) and (3) were not changed by the amendment, they are not set out.

§ 143B-63. Historical Commission — members; selection; quorum; compensation. — The Historical Commission of the Department of Cultural Resources shall consist of 11 members appointed by the Governor.

The members of the North Carolina Historical Commission shall include the members of the existing North Carolina Historical Commission who shall serve for a period equal to the remainder of their current terms on the Commission, plus four additional appointees of the Governor, two of whose appointments shall expire March 31, 1979, and two of whose appointments shall expire March 31, 1981. At the end of the respective terms of office of the members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Of the members, at least five shall have professional training or experience in the fields of archives, history, historic preservation, historic architecture, archaeology, or museum administration, including at least three currently involved in the teaching of history at the college or university level or in administering archives or historical collections or programs. Any appointment to fill a vacancy on the Commission created by resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 45; 1977, c. 513, s. 1.)

Editor's Note. — The 1977 amendment substituted "11" for "seven" in the first paragraph and rewrote the second paragraph.

Part 5. Archaeological Advisory Committee.

§ 143B-66. Archaeological Advisory Committee — members; selection; compensation; terms; removal; vacancies. — For the purposes of reviewing existing statutes relating to archaeological resources, of making recommendations to the General Assembly concerning programs and statutes, and of advising the Department on the development of its archaeological program, there is hereby created an Archaeological Advisory Committee to be composed of the following members: two members who are citizens of North Carolina and interested in the archaeology of the State appointed by the Governor, one member of the Senate appointed by the President of the Senate; one member of the House of Representatives appointed by the Speaker of the House; two members representing the American Indians of North Carolina, one appointed by the Tribal Council of the Eastern Band of the Cherokee, and one appointed by the Executive Director of the North Carolina State Commission of Indian Affairs; and one archaeologist appointed by the North Carolina Archaeological Advisory Council; and the Secretary of Cultural Resources or his designee as an ex officio member. Members of the Committee shall serve without salary, but their actual expenses resulting from the performance of their official duties shall be reimbursed in accordance with State policy. Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. The present members of the Archaeological Advisory Committee shall serve the remainder of their terms, which will expire June 30, 1975. To create and maintain staggered terms, one at-large member appointed by the Governor, the member appointed by the President of the Senate, and the member appointed by the Tribal Council of the Eastern Band of the Cherokee shall be appointed for a term of two years to expire June 30, 1977, at which time their successors shall be appointed pursuant to this section for four-year terms. The remaining Committee members shall be appointed for four-year terms to expire June 30, 1979. The chairman shall be designated by the Governor from among the members of the Committee and shall serve until the expiration of his regularly appointed term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

An appointment to fill a vacancy on the Committee shall be made, according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the Committee for any reason shall be for the balance of the unexpired term. (1973, c. 596; 1975, c. 585, ss. 1, 2.)

Editor's Note. — The 1975 amendment deleted "the State Historian as chairman and" following "to be composed of" near the middle of the first sentence of the first paragraph, inserted "two members who are citizens of North Carolina and interested in the archaeology of the State appointed by the Governor" in that sentence, inserted "and the Secretary of Cultural Resources or his designee as an ex officio member" at the end of that sentence, substituted "staggered four-year terms" for "two-year terms" in the third sentence of that paragraph, substituted the present fourth through seventh sentences of that paragraph for a provision which read: "Initial appointment shall be made immediately upon ratification for terms to expire June 30, 1975" and added the second and third paragraphs.

Part 6. Public Librarian Certification Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government

Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties. — There is hereby created the U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary in carrying out the provisions and purposes of this Part.

(1) The U.S.S. North Carolina Battleship Commission is authorized and empowered to adopt such rules and regulations not inconsistent with the management responsibilities of the Secretary of the Department provided by Chapter 143A of the General Statutes and laws of this State and this Chapter that may be necessary and desirable for the operation and maintenance of the U.S.S. North Carolina as a permanent memorial and exhibit commemorating the heroic participation of the men and women of North Carolina in the prosecution and victory of the Second World War and for the faithful performance and fulfillment of its duties and obligations.

(2) The U.S.S. North Carolina Battleship Commission shall have the power and duty to establish standards and adopt rules and regulations: (i) establishing and providing for a proper charge for admission to the ship; and (ii) for the maintenance and operation of the ship as a permanent memorial and exhibit.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. (1973, c. 476, s. 57; 1977, c. 741, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Part" for "Article" at the end of the introductory paragraph, substituted the language beginning "commemorating the heroic participation of" for "as provided in Article 39 of Chapter 143 of the General Statutes of North Carolina" at the end of subdivision (1) and deleted "and Article 39 of Chapter 143 of the General Statutes of North Carolina" at the end of subdivision (3).

§ 143B-73.1. U.S.S. North Carolina Battleship Commission — duties. — The Commission shall have the further duty and authority to select an appropriate site for the permanent berthing of the Battleship U.S.S. North Carolina, taking into consideration factors including, but not limited to, the accessibility, location in relation to roads and highways, scenic attraction, protection from hazards of weather, fire and sea, cost of site and berthing, cooperation of local governmental authorities in securing, equipping, and maintaining appropriate areas surrounding the site, and others which may affect the suitability of such site for establishment of the ship as a permanent memorial and exhibit; to accept gifts, grants, and donations for the purposes of this Article; to transport to, and berth the ship at the site; to ready the ship for visitation by the public; to establish and provide for a proper charge for admission to the ship, and for safekeeping of funds; to maintain and operate the ship as a permanent memorial and exhibit; to acquire property, both real and personal, with the approval of the Governor and the Council of State, and to accept donations of property, both real and personal, from any source; to establish, supervise, manage and maintain in New Hanover County with the approval and assistance of the Department of Cultural Resources exhibits, dramas, cultural activities, museums, and records pertaining to the marine and

naval history of the State of North Carolina and the United States of America; to identify, preserve and protect properties having historical, marine and naval significance to New Hanover County, the State, its communities and counties and the nation; to establish and provide for a proper charge for admission to all properties maintained and operated by the Commission in New Hanover County; to otherwise provide in carrying out its duties for the establishment of appropriate activities to encourage interest in the marine and naval history of North Carolina; to perpetuate the memory of North Carolinians who gave their lives in the course of World War II and in the events in which the battleship was a participant, and to allocate funds for the fulfillment of the duties and authority herein provided as may be necessary and appropriate for the purpose of this Article. (1961, c. 158; 1977, c. 741, ss. 1, 8.)

Editor's Note. — The above section was formerly § 143-366. It was amended and recodified as § 143B-73.1 by Session Laws 1977, c. 741, effective July 1, 1977. The amendment inserted "further" near the beginning of the section and inserted the language beginning "to acquire property" and ending "the battleship was a participant."

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation. — The U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources shall consist of 18 members including the Secretary of Cultural Resources and the Secretary of Commerce who shall serve as voting ex officio members. The initial members of the Commission shall be the appointed members of the current Battleship Commission who shall serve for a period equal to the remainder of their current terms on the Battleship Commission. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the U.S.S. North Carolina Battleship Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business. The Governor shall designate from among the members of the Commission a chairman, vice-chairman and treasurer. The Secretary of Cultural Resources or his designee shall serve as secretary of the Commission. The Commission shall meet at least twice annually upon the call of the chairman, the Secretary of Cultural Resources, or any seven members of the Commission. (1973, c. 476, s. 58; 1977, c. 741, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "18" for "not more than 15," "Secretary of Cultural Resources and the Secretary of Commerce" for "Secretary of Natural and Economic Resources" and "voting ex officio members" for "an ex officio member" in the first sentence of the first paragraph and added the second, third and fourth sentences of the last paragraph.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.1. U.S.S. North Carolina Battleship Commission — funds. — The Commission shall establish and maintain a "Battleship Fund" composed of the

moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial; such records and books shall be available for audit at any time by the State Auditor of North Carolina, and shall be annually audited by him in the same manner as audits are made of other State agencies and departments. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158; 1977, c. 741, ss. 2, 8.)

Editor's Note. — The above section was formerly § 143-367. It was amended and recodified as § 143B-74.1 by Session Laws 1977, c. 741, effective July 1, 1977. The amendment inserted "in an amount to be determined by the Secretary of Cultural Resources" in the last sentence.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.2. U.S.S. North Carolina Battleship Commission — employees. — The Department of Cultural Resources is hereby authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this Article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this Article shall be, insofar as practicable, North Carolina materials. (1961, c. 158; 1975, c. 879, s. 46; 1977, c. 741, ss. 6, 8.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Purchase and Contract Division" near the middle of the last sentence of the section.

This section was formerly § 143-368. It was amended and recodified as § 143B-74.2 by Session Laws 1977, c. 741, effective July 1, 1977. The amendment substituted "Department of Cultural Resources" for "Commission" near the beginning of the first sentence and deleted the former last sentence, relating to utilization of the services of the Department of Administration for the procurement of materials and supplies.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest. — It shall be unlawful for any member of the Commission to charge, receive, or obtain, directly or indirectly, any fee, commission, retainer or brokerage other than established salaries to be fixed by the Commission, and no member of the Commission shall have any interest in any land, materials, commissions or contracts sold to or made with the Commission, or with any member thereof. Violation of any provisions of this section shall be a misdemeanor and upon conviction shall be punishable by removal from membership or employment and by a fine of not less than one hundred dollars ($100.00) or by imprisonment not to exceed six months or both, in the discretion of the court. (1961, c. 158; 1977, c. 741, ss. 7, 8.)

Editor's Note. — This section was formerly § 143-369. It was amended and recodified as § 143B-74.3 by Session Laws 1977, c. 741, effective July 1, 1977. The amendment deleted "or for any employee thereof" preceding "to charge" near the beginning of the first sentence and "or employee thereof" preceding "shall have any interest" and "or employee" preceding "thereof" near the end of the first sentence.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

Part 13. America's Four Hundredth Anniversary Committee.

§ 143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties. — There is hereby created the America's Four Hundredth Anniversary Committee of the Department of Cultural Resources. The Committee shall have the following functions and duties:

(1) To advise the Secretary of the Department on the planning, conducting, and directing appropriate observances of, and on providing necessary physical facilities and other requirements for, the commemoration of the landing of Sir Walter Raleigh's colony on Roanoke Island; and

(2) To advise the Secretary of the Department upon any matter the Secretary might refer to it. (1973, c. 476, s. 74; 1975, c. 19, s. 56.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "on" for "of" preceding "providing" in subdivision (1).

Part 15. North Carolina Art Society, Incorporated.

§ 143B-89. North Carolina Art Society, Incorporated. — The North Carolina Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named by the Governor shall serve for terms of three years each. (1973, c. 476, s. 80; 1975, c. 386; 1977, c. 702, s. 3.)

Editor's Note. — The 1975 amendment substituted "16 members" for "15 members" near the beginning of the second sentence.

The 1977 amendment combined the former second and third sentences by substituting the language beginning "of a minimum of 22 members as follows" and ending "a minimum of 12 directors who" for "16 members, of whom the Governor of this State, the Superintendent of Public Instruction, the Treasurer of the State of North Carolina, and the chairman of the art committee of the North Carolina Federation of the Woman's Club shall be ex officio members, and four others shall be named by the Governor of the State" at the end of the former second sentence and for "The remaining eight directors" at the beginning of the former third sentence, and substituted "six directors" for "four directors" and "three years" for "four years" in the present third sentence.

Part 23. John Motley Morehead Memorial Commission.

§§ 143B-116 to 143B-120: Reserved for future codification purposes.

Part 24. Grassroots Arts Program.

§ 143B-121. Program established. — The Department of Cultural Resources shall establish a program to be known as the Grassroots Arts Program, by which

funds shall be distributed among the counties of this State for the purpose of assisting the counties in the development of community arts programs. The Grassroots Arts Program shall be established within the "Community Art Development Section" (North Carolina Arts Council) of the Division of the Arts. (1977, c. 1008, s. 1.)

Editor's Note. — Session Laws 1977, c. 1008, s. 7, makes this Part effective July 1, 1977.

§ 143B-122. Distribution of funds. — Funds available under the Grassroots Arts Program shall be distributed among the counties on a per capita basis. (1977, c. 1008, s. 2.)

§ 143B-123. Rules and procedures; standards for qualification for funds. — The Department of Cultural Resources shall be authorized to adopt rules and procedures necessary to implement this program and shall adopt standards which must be met by organizations within the counties in order to qualify for funds under the Grassroots Arts Program. The standards adopted shall include, but not be limited to the following:

(1) The organization must show that it exists primarily to aid the arts and that it aids the arts in all its forms including the performing, visual and literary.
(2) The organization must show that its programs are open to the entire community.
(3) The organization must show that it is a nonprofit, tax-exempt corporation, governed by a citizen board which is not self-perpetuating, and that it has been in existence and active for at least one full year.
(4) The organization must show that it can match funds available under the Grassroots Arts Program with public or private funds from within the county in which it is located at a ratio of one-to-one. (1977, c. 1008, s. 3.)

§ 143B-124. Designation of organization as official distributing agent; duties. — Guided by the standards set out in G.S. 143B-123, the board of county commissioners of each county shall designate to the Department of Cultural Resources an organization to serve as its distributing agent for Grassroots Arts Program funds. Upon the approval of the Department of Cultural Resources, the designated organization shall become the official distributing agent for that county and shall remain so until such time as it no longer meets the necessary standards. To receive its per capita funds, the official distributing agent must annually submit to the Department of Cultural Resources for its approval a plan for the expenditure of the funds allotted to that county and must account for the funds after they have been expended. Funds may be used for programming, administrative and operating expenses, and should assist in the total development of the arts within that county. (1977, c. 1008, s. 4.)

§ 143B-125. Disposition of funds for counties without organizations meeting Department standards. — Funds for counties without organizations which meet the necessary standards set by the Department of Cultural Resources shall be retained by the department and used for arts programming within these counties. Where feasible, the department shall maintain the same per capita rate for the distribution of funds to these counties and shall require the same matching ratio. No State funds appropriated for the programs set forth in this Part shall be used to pay for personnel positions. (1977, c. 1008, s. 5.)

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-137. Department of Human Resources — duties. — It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of general and mental health and rehabilitation with the basic goal being to assist all citizens — as individuals, families, and communities — to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible the department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. Therefore, it shall be the policy of this department to establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures. (1973, c. 476, s. 118; 1977, c. 923, s. 2.)

Editor's Note. — The 1977 amendment added the second sentence.

Applied in Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

§ 143B-139.1. Department of Human Resources — head — to establish rules and regulations applicable to local human resource agencies. — The Secretary of the Department of Human Resources is authorized to establish rules and regulations applicable to local human resource agencies for the purpose of program evaluation, fiscal audits, and collection of third-party payments. (1975, c. 875, s. 45.)

Editor's Note. — Session Laws 1975, c. 875, s. 64, makes the act effective July 1, 1975.

§ 143B-139.2. Department of Human Resources — head — requests for grants-in-aid from non-State agencies. — It is the intent of this General Assembly that non-State health and welfare agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Human Resources for recommendations to the Governor and the Advisory Budget Commission and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Human Resources, provide a postaudit of their operations that has been done by a certified public accountant. (1975, c. 875, s. 16.)

Editor's Note. — Session Laws 1975, c. 875, s. 64, makes the act effective July 1, 1975.

§ 143B-140. Department of Human Resources — organization. — The Department of Human Resources shall be organized initially to include the Board of Human Resources, the Commission for Health Services, the Commission for Mental Health and Mental Retardation Services, the Eugenics Commission, the Commission for the Blind, the Professional Advisory Committee, the Blind Advisory Committee, the Social Services Commission, the Commission for Medical Facility Services and Licensure, the Council for Institutional Boards, the Council on Developmental Disabilities, the Governor's

Coordinating Council on Aging, the Governor's Council on Employment of the Handicapped, the Governor's Advocacy Council on Children and Youth, the Mental Health Council, the Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis, the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina, the Board of Directors of the North Carolina Orthopedic Hospital, the Board of Directors of the Governor Morehead School, the Board of Directors of the North Carolina Schools for the Deaf, the Board of Directors for the Confederate Women's Home, the Division of Health Services, the Division of Mental Health and Mental Retardation Services, the Division of Social Services, the Division of Vocational Rehabilitation Services, the Division of Blind Services, the Division of Facility Services and Licensure, the Division of Institutional Services, the Division of Aging, and such other divisions as may be established under the provisions of this Chapter. (1973, c. 476, s. 121; 1975, c. 90; 1977, c. 242, s. 3; c. 679, ss. 5-8.)

Editor's Note. — The 1975 amendment substituted "Division of Social Services" for "Division of Social and Rehabilitative Services" near the end of the section.

The first 1977 amendment inserted "the Division of Aging" near the end of the section.

The second 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" near the beginning of the section and "Division of Mental Health and Mental Retardation Services" for "Division of Mental Health Services" near the end of the section.

Part 3. Commission for Health Services.

§ 143B-142. Commission for Health Services — creation, powers and duties. — There is hereby created the State Commission for Health Services of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the public health program to protect and promote public health, with the power and duty to adopt, amend, and rescind rules and regulations under, and not inconsistent with, the laws of the State necessary to carry out the provisions and purposes of this Article.

(2) The Commission for Health Services shall have the power and duty to establish standards and adopt rules and regulations:

a. For the operation of home health agencies as provided by law;

b. Regulating sanitary conditions of establishments providing food and lodging as provided by Article 5 of Chapter 72 of the General Statutes of the State of North Carolina;

c. Preparing design standards to be used as a guide in approving sewage-treatment devices and holding tanks for marine toilets as provided by G.S. 75A-6(o);

d. Relating to the use, storage, transportation, and disposal of radiation, radiation machines, and radioactive materials as provided by Chapter 104C of the General Statutes of the State of North Carolina;

e. Adopting minimum health and sanitation standards for day-care facilities as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina;

f. Establishing specifications for sanitary privies for schools where water-carried sewerage facilities are unavailable as provided by G.S. 115-132;

g. Governing the sanitation of local confinement facilities as provided by G.S. 153-53.4;

h. Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provision of the Clean Water Bond Bill;

i. Repealed by Session Laws 1975, c. 694, s. 6.

j. For the operation of nursing homes as defined in G.S. 130-9(e).

(1975, c. 19, s. 57; c. 694, s. 6.)

Editor's Note. —

The first 1975 amendment corrected an omission in the 1973 act by inserting "to" following "Relating" near the beginning of paragraph d of subdivision (2).

The second 1975 amendment repealed paragraph i of subdivision (2).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivision (2) are set out.

§ 143B-143. Commission for Health Services — members; selection; quorum; compensation. — The Commission for Health Services of the Department of Human Resources shall consist of 12 members, four of whom shall be elected by the North Carolina Medical Society and eight of whom shall be appointed by the Governor.

One of the members appointed by the Governor shall be a licensed pharmacist, one a dairyman, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124; c. 1367, ss. 1, 2.)

Editor's Note. — The 1973 amendment substituted "12" for "11" and "eight" for "seven" in the first paragraph and inserted "and one a registered nurse" near the end of the first sentence of the second paragraph.

Part 4. Commission for Mental Health and Mental Retardation Services.

§ 143B-147. Commission for Mental Health and Mental Retardation Services — creation, powers and duties. — (a) There is hereby created the Commission for Mental Health and Mental Retardation Services of the Department of Human Resources with the power and duty to adopt, amend and rescind rules and regulations to be followed in the conduct of State and local

mental health, mental retardation and alcohol and drug treatment programs, in order to promote the amelioration or elimination of the mental health, mental retardation, or alcohol and drug abuse problems of the citizens of this State; however, such rules and regulations shall not be inconsistent with the provisions of this Article or other State laws. Specifically:

(1) The Commission for Mental Health and Mental Retardation Services is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the treatment programs administered by the Department of Human Resources as provided in Chapter 122 of the General Statutes of North Carolina for the mentally retarded, mentally ill and inebriate, not inconsistent with the management responsibilities of the Secretary of Human Resources provided by Chapter 143B of the General Statutes of North Carolina and the Executive Organization Act of 1973.

(2) The Commission for Mental Health and Mental Retardation Services shall have the power and duty to establish standards and adopt rules and regulations:

a. For the professional care of persons admitted to institutions, centers, or hospitals established in accordance with Chapter 122, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State institution, center or hospital under its jurisdiction which is now or may hereafter be established;

b. For establishing minimum standards for local community alcoholism programs as a condition for participation in State grants-in-aid authorized by G.S. 122-7.1(b);

c. For the establishment and operation of area mental health authorities as prescribed in Article 2F of Chapter 122 of the General Statutes;

d. For the inspection and licensing of private hospitals for the mentally disordered as provided by G.S. 122-72;

e. For the licensing of all area or community mental health facilities of whatsoever nature, pursuant to Article 2F of Chapter 122 of the General Statutes.

(3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mental health or mental retardation or alcohol abuse programs which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Mental Health or the Commission for Mental Health Services shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health and Mental Retardation Services.

(b) All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, deleted the former subdivision (2), paragraph c, relating to the establishment and operation of local mental health clinics, and rewrote paragraphs d and e as c and d of former subdivision (2). The rewritten paragraphs were substantially the same as paragraphs c and d in subdivision (a)(2) of the section as amended by the second 1977 amendment.

The second 1977 amendment, effective July 1, 1977, rewrote this section, reestablishing the former Commission for Mental Health Services as the Commission for Mental Health and Mental Retardation Services and making other changes.

§ 143B-148. Commission for Mental Health and Mental Retardation Services — members; selection; quorum; compensation. — (a) The Commission for Mental Health and Mental Retardation Services of the Department of Human Resources shall consist of 15 members, two of whom shall be members of the General Assembly, with concern for the problems of mental illness, mental retardation, and alcohol and drug abuse, and 13 of whom shall be citizens appointed by the Governor. Of the two members from the General Assembly, one shall be appointed by the Speaker of the House of Representatives and one shall be appointed by the President of the Senate, each to serve two-year terms commencing on July 1 of each odd-numbered year. The Commission membership shall include the following persons appointed by the Governor:

(1) Two citizens who are either a parent or guardian of a mentally retarded citizen;
(2) One mental retardation professional as defined in G.S. 122-36(i);
(3) Two citizens who are concerned with the problems in the field of mental health care for the mentally ill;
(4) One mental health professional as defined in G.S. 122-36(h);
(5) Two citizens who represent State or local citizen organizations which are concerned with the problems of alcohol or drug abusers;
(6) One professional in the field of drug or alcohol abuse, including, but not limited to professional social workers, registered nurses, medical doctors, and psychologists; and
(7) Any four citizens who, in the Governor's sound discretion, would be an asset to the Commission for Mental Health and Mental Retardation Services in carrying out its duties.

At least one of the Governor's appointees shall be an attorney licensed to practice law in the State and one a medical doctor licensed to practice medicine in the State.

The Governor shall select his 13 appointees to insure that all sections of the State have representation on the Commission. Notwithstanding the provisions of G.S. 143B-13(a) relating to existing Commission members, the Governor shall appoint members to the Commission in accordance with the foregoing membership requirements. At the initial formation of the Commission for Mental Health and Mental Retardation Services, the Governor shall designate four of his appointees to serve for two years, four to serve three years, five to serve four years, all terms to commence on July 1, 1977. Thereafter the term of all Commission members appointed by the Governor shall be four years. All Commission members shall serve their designated term and until their successors are duly appointed and qualified.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 relating to appointment, qualifications, terms, and removal of members shall apply to all members of the Commission for Mental Health and Mental Retardation Services. G.S. 143B-13(c) shall not apply to Commission members who are also members of the General Assembly.

(c) Commission members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1(b) and (c). Commission members who are employees of the State shall receive travel allowances at the rates set forth in G.S. 138-6. All other Commission members shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 130; 1977, c. 679, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section, reorganizing the former Commission for Mental Health Services as the Commission for Mental Health and Mental Retardation Services and making other changes.

§ 143B-149. Commission for Mental Health and Mental Retardation Services — officers. — The Commission for Mental Health and Mental Retardation Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 131; 1977, c. 679, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" in the first sentence.

§ 143B-150. Commission for Mental Health and Mental Retardation Services — regular and special meetings. — The Commission for Mental Health and Mental Retardation Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 132; 1977, c. 679, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" near the beginning of the section.

Part 5. Eugenics Commission.

§§ 143B-151, 143B-152: Repealed by Session Laws 1977, c. 497.

Cross Reference. — As to sterilization of mentally ill and mentally retarded persons, see §§ 35-36 through 35-50.

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties. — There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 108-76;

b. For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77;

c. For the inspection and licensing of child-care institutions as provided by G.S. 108-78;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153-51 and Part 2 of Article 3 of Chapter 108 of the General Statutes of the State of North Carolina;
e. For the payment of the costs of necessary day care for minor children of needy families; and
f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Article 3 of Chapter 108 of the General Statutes of the State of North Carolina.

(1975, c. 747, s. 2; 1977, c. 674, s. 7.)

Editor's Note. —

The 1975 amendment, effective Oct. 1, 1975, substituted "charitable organizations, professional fund-raising counsel and professional solicitors" for "public solicitors" in subdivision (3)f.

The 1977 amendment, effective July 1, 1977, deleted "private" from paragraph c of subdivision (3).

Session Laws 1975, c. 747, s. 3, contains a severability clause.

Section 153-51, referred to in this section, was repealed by Session Laws 1973, c. 822. For present provisions as to county jail and detention services, see § 153A-220.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (3) are set out.

Applied in Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

§ 143B-154. Social Services Commission — members; selection; quorum; compensation. — The Social Services Commission of the Department of Human Resources shall consist of one member from each congressional district in the State, all of whom shall be appointed by the Governor for four-year terms.

The initial members of the Commission shall be the appointed members of the current Social Services Commission who shall serve for the remainder of their current terms and four additional members appointed by the Governor for terms expiring April 1, 1981. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, removal or disability of a member shall be for the balance of the unexpired term.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district.

If on July 1, 1977, or at any time thereafter due to congressional redistricting, two or more members of the Social Services Commission shall reside in the same congressional district, then such members shall continue to serve as members of the Commission for a period equal to the remainder of their unexpired terms, provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the Social Services Commission who is a resident of each congressional district in the State.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 135; 1977, c. 516.)

Editor's Note. — The 1977 amendment rewrote the former first paragraph as the present first, second, third and fourth paragraphs. The principal change made by the

amendment was to reorganize the Commission, which formerly consisted of seven members, with no residential qualifications, so as to provide for a member for each congressional district.

Part 7. Commission for the Blind.

§ 143B-158. Commission for the Blind — members; selection; quorum; compensation. — The Commission for the Blind of the Department of Human Resources shall consist of 11 members appointed by the Governor. The initial members of the Commission shall include the members of the existing Commission for the Blind who shall serve for a period equal to the remainder of their current terms on the existing Commission for the Blind, three of whose appointments expire July 2, 1974, three of whose appointments expire July 2, 1975, and three of whose appointments expire July 2, 1977. No physician, no optometrist, no optician, no oculist, nor any other person who receives services or funds regulated by the Commission shall be qualified to serve on the Commission for the Blind. Any person who is presently a member of the Commission and is disqualified by reason of the preceding sentence shall be deemed to have resigned his position on the Commission. The Governor shall appoint a successor for the balance of the unexpired term. At all times at least two members of the Commission shall be persons who are visually handicapped to the minimum extent of being legally blind. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 140; 1977, c. 581.)

Editor's Note. — The 1977 amendment rewrote the former third through seventh sentences of the first paragraph as the present third through sixth sentences. The principal effect of the amendment was to disqualify from service on the Commission physicians, optometrists and other persons who might profit from the decisions of the Commission. Formerly physicians and optometrists were required to have continuous representation on the Commission.

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties. — (a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources.

(b) The Consumer and Advocacy Advisory Committee for the Blind shall advise all State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities, including the secretary, director and members of said boards, commissions, agencies, divisions, departments, schools, et cetera, on the needs of the citizens of the State of North Carolina who are now or will become visually handicapped or impaired.

(c) The Consumer and Advocacy Advisory Committee for the Blind shall also advise every State board, commission, agency, division, department, school, corporation, or other State-administered associations or entity concerning sight conservation programs that it supervises, administers or controls.

(d) All State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities including the secretary, director and members of said State boards, agencies, departments, et cetera, which supervise, administer or control any program for or affecting the citizens of the State of North Carolina who are now or will become visually handicapped or impaired shall inform the Consumer and Advocacy Advisory Committee for the Blind of any proposed change in policy, program, budget, rule, or regulation which will affect the citizens of North Carolina who are now or will become visually handicapped or impaired. Said board, commission, et cetera, shall allow the Consumer and Advocacy Advisory Committee for the Blind, prior to passage, unless such change is made pursuant to G.S. 150A-13, an opportunity to object to the change and present information and proposals on behalf of the citizens of North Carolina who are now or will become visually handicapped or impaired. This subsection shall also apply to all sight conservation programs of the State of North Carolina.

(e) Nothing in this statute shall prohibit a board, commission, agency, division, department, et cetera, from implementing any change after allowing the Consumer and Advocacy Advisory Committee for the Blind an opportunity to object and propose alternatives. Shifts in budget items within a program or administrative changes in a program required in the day-to-day operation of an agency, department, or school, et cetera, shall be allowed without prior consultation with said Committee. (1977, c. 842, s. 1; c. 1050.)

Editor's Note. — Both 1977 amendments, effective July 1, 1977, rewrote this section, which formerly recreated the Blind Advisory Committee. The two 1977 acts were identical, except that the second sentence of subsection (e) of the section as set out above appeared in this section as amended by Session Laws 1977, c. 842, but not in the section as amended by Session Laws 1977, c. 1050.

§ 143B-164. Consumer and Advocacy Advisory Committee for the Blind — members; selection; quorum; compensation. — (a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources shall consist of the following members:

(1) President and Vice-President of the National Federation of the Blind of North Carolina;
(2) President and Vice-President of the North Carolina Council of the Blind;
(3) President and Vice-President of the North Carolina Association of Workers for the Blind;
(4) President and Vice-President of the North Carolina Chapter of the American Association of Workers for the Blind;
(5) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;
(6) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Human Resources;
(7) Executive Director of the North Carolina Society for the Prevention of Blindness, Inc.

Provided, each officeholder shall serve on the Committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the Committee and his successor in office shall immediately become a member of the Committee.

Provided, further, if any of the above organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the officeholder in the new organization or of the new position shall become a member of the Committee.

(b) A chairman shall be elected by a majority vote of the Committee members for a one-year term to coincide with the fiscal year of the State. Provided, the first chairman shall be elected for a term to end June 30, 1978.

Provided, further, if any chairman does not desire or is unable to continue to perform as chairman for any reason, including his becoming ineligible to be a member of the Committee as specified in subsection (a), the remaining members shall elect a chairman to fulfill the remainder of his term.

(c) A majority of the members shall constitute a quorum for the transaction of business.

(d) The Committee shall meet once a quarter to act upon any information provided them by any board, commission, agency, division, department, school, et cetera. Special meetings may be held at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. Provided, a majority of the members shall be allowed to waive any meeting.

(e) All clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources.

(f) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 842, s. 1; c. 1050.)

Editor's Note. — Both 1977 amendments, effective July 1, 1977, rewrote this section, which formerly related to the organization of the Blind Advisory Committee. The amendments to this section were identical.

Part 10. North Carolina Medical Care Commission.

§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties. — There is hereby created the North Carolina Medical Care Commission of the Department of Human Resources with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The North Carolina Medical Care Commission has the duty to adopt statewide plans for the construction and maintenance of hospitals, medical centers, and related facilities, or such other as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto.

(8) The Commission shall adopt such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the North Carolina Medical Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(9) The Commission shall have the power and duty to adopt rules and regulations with regard to emergency medical services in accordance with the provisions of Article 26 of Chapter 130 and Article 56 of

Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3.)

Editor's Note. — The first 1973 amendment substituted "North Carolina Medical Care Commission" for "Commission for Medical Facility Services and Licensure" in the introductory paragraph and subdivisions (1) and (8).

The second 1973 amendment added subdivision (9).

Only the introductory paragraph and the subdivisions added or changed by the amendments are set out.

§ 143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation. — The North Carolina Medical Care Commission of the Department of Human Resources shall consist of 17 members appointed by the Governor. Three of the members appointed by the Governor shall be nominated by the North Carolina Medical Society, one member shall be nominated by the North Carolina Nurses Association, one member shall be nominated by the North Carolina Pharmaceutical Association, one member nominated by the Duke Foundation and one member nominated by the North Carolina Hospital Association. The remaining 10 members of the North Carolina Medical Care Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interest groups in North Carolina. One such member appointed by the Governor shall be a dentist licensed to practice in North Carolina. The initial members of the Commission shall be 18 members of the North Carolina Medical Care Commission who shall serve for a period equal to the remainder of their current terms on the North Carolina Medical Care Commission, six of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. To achieve the required 17 members the Governor shall appoint three members to the Commission upon the expiration of four members' initial terms on June 30, 1973. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

Vacancies on said Commission among the membership nominated by a society, association, or foundation as hereinabove provided shall be filled by the Executive Committee or other authorized agent of said society, association or foundation until the next meeting of the society, association or foundation at which time the society, association or foundation shall nominate a member to fill the vacancy for the unexpired term.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 149; c. 1090, s. 2.)

Editor's Note. — The 1973 amendment changed the name of the Commission for Medical Facility Services and Licensure to North Carolina Medical Care Commission.

§ 143B-167. North Carolina Medical Care Commission — regular and special meetings. — The North Carolina Medical Care Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least nine members. (1973, c. 476, s. 150; c. 1090, s. 2.)

Editor's Note. — The 1973 amendment changed the name of the Commission for Medical Facility Services and Licensure to North Carolina Medical Care Commission.

§ 143B-168. North Carolina Medical Care Commission — officers. — The North Carolina Medical Care Commission shall have a chairman and vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 151; c. 1090, s. 2.)

Editor's Note. — The 1973 amendment changed the name of the Commission for Medical Facility Services and Licensure to North Carolina Medical Care Commission.

Part 11. Council for Institutional Boards.

§ 143B-170. Council for Institutional Boards — members; selection; quorum; compensation. — The Council for Institutional Boards of the Department of Human Resources shall consist of the chairman respectively of the following bodies:

(1) The Board of Directors of the North Carolina Specialty Hospitals;
(2) The Board of Directors of the North Carolina Orthopedic Hospital;
(3) The Board of Directors of the Lenox Baker Children's Hospital;
(4) The Board of Directors of the Governor Morehead School;
(5) The Board of Directors of the North Carolina Schools for the Deaf, and
(6) The Board of Directors of the Confederate Women's Home.

Members shall serve on the Council for the same terms they serve as chairman of their respective institutional boards.

A majority of the members of the Council shall constitute a quorum for the transaction of business.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 154; 1977, c. 462, s. 1.)

Editor's Note. — The 1977 amendment substituted "North Carolina Specialty Hospitals" for "North Carolina Sanatoriums for the Treatment of Tuberculosis" in subdivision (1) and "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in subdivision (3) in the first paragraph.

Part 12. Boards of Directors of Institutions.

§ 143B-173. Boards of directors of institutions — creation, powers and duties. — (a) There are hereby created the following boards of directors of institutions:

(1) The Board of Directors of the North Carolina Specialty Hospitals;
(2) The Board of Directors of the North Carolina Orthopedic Hospital;
(3) The Board of Directors of the Lenox Baker Children's Hospital;
(4) The Board of Directors of the Governor Morehead School;
(5) The Board of Directors of the North Carolina Schools for the Deaf; and
(6) The Board of Directors of the Confederate Women's Home

with the power and duty to adopt rules and regulations to be followed in the conduct of their respective institutions.

(1977, c. 462, s. 2.)

Editor's Note. — The 1977 amendment substituted "North Carolina Specialty Hospitals" for "North Carolina Sanatoriums for the Treatment of Tuberculosis" in subdivision (1) and "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in subdivision (3), of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 143B-174. Boards of directors of institutions — members; selection; quorum; compensation. — The Board of Directors of the North Carolina Specialty Hospitals of the Department of Human Resources shall consist of 12 members appointed by the Governor for terms of six years. The Board of Directors of the Lenox Baker Children's Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Orthopedic Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the Governor Morehead School of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Schools for the Deaf of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of four years. The Board of Directors of the Confederate Women's Home of the Department of Human Resources shall consist of seven members appointed by the Governor for terms of two years. The initial members of each of the aforementioned boards of directors shall be the members of the previously existing board of directors for each institution. The members of the various boards of directors shall serve for a period equal to the remainder of their current terms on their respective boards, which are as follows: the Board of Directors of North Carolina Specialty Hospitals, four of whose appointments expire April 29, 1973, four of whose appointments expire April 29, 1975, and four of whose appointments expire April 29, 1977; the Board of Directors of the North Carolina Orthopedic Hospital two of whose appointments expire April 4, 1973, four of whose appointments expire April 4, 1975, and three of whose appointments expire April 4, 1977; the Board of Directors of the Lenox Baker Children's Hospital three of whose appointments expire July 10, 1973, three of whose appointments expire July 10, 1975, and three of whose appointments expire July 10, 1977; the Board of Directors of the Governor Morehead School four of whose appointments expire May 1, 1973, three of whose appointments expire May 1, 1975, and four of whose appointments expire May 1, 1977; the Board of Directors of the North Carolina Schools for the Deaf all of whose appointments expire July 17, 1973; and the Board of Directors of the Confederate Women's Home all of whose appointments expire June 30, 1973. At the end of the respective terms of office of the initial members of each board, their successors shall be appointed for terms as hereinabove delineated and until their successors are appointed and qualify. Any appointment to fill a vacancy on the board of directors created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of a board of directors from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of each board of directors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of a board of directors shall constitute a quorum for the transaction of business.

All clerical and other services required by a board of directors shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 158; 1977, c. 462, s. 3.)

Editor's Note. — The 1977 amendment substituted "Specialty Hospitals" for "Sanatoriums for the Treatment of Tuberculosis" in the first sentence, "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in the second sentence and "North Carolina Specialty Hospitals" for "Tuberculosis Sanatoriums" and "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in the eighth sentence of the first paragraph.

Part 13. Council on Developmental Disabilities.

§ 143B-178. Council on Developmental Disabilities — definitions. — The following definitions apply to this Chapter:

(1) The term "developmental disability" means a disability of a person which

a. 1. Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

2. Is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or

3. Is attributable to dyslexia resulting from a disability described in clause 1 or 2 of this subparagraph;

b. Originates before such person attains age 18;

c. Has continued or can be expected to continue indefinitely;

d. Constitutes a substantial handicap to such person's ability to function normally in society.

(2) The term "services for persons with developmental disabilities," as it is used in this Article, means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities. (1973, c. 476, s. 168; 1977, c. 881, ss. 1, 2.)

Editor's Note. — The 1977 amendment rewrote subdivision (1) and inserted "habilitation or" near the beginning of subdivision (2).

§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation. — The Council on Developmental Disabilities of the Department of Human Resources shall consist of 36 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Fifteen members from the General Assembly and State government agencies as follows: two persons who are members of the Senate, two persons who are members of the House of Representatives, one representative of the Department of Human Resources, one

representative of the Department of Public Instruction, one representative of the Department of Correction, and eight representatives of the Department of Human Resources to include representatives from the State health planning and development agency, health services, mental health services, vocational rehabilitation services, division of aging, services for the blind, social services, and youth services.

(2) Twelve members designated as consumers of services for the developmentally disabled. As used in this section, the term "consumer" means persons with developmental disabilities, or their parents or guardians, who are not officers of any entity, or employees of any State agency or of any other entity, which receives federal funds under Part A Title I, P.L. 90-170 as amended by P.L. 91-517 and P.L. 94-103, entitled "Mental Retardation Facilities and Community Health Centers Construction Act of 1963."

(3) Nine members at large, who by their interests and efforts have helped provide or may help provide improved services for those who are developmentally disabled. Of the nine at-large members, at least one shall represent each of the following organizations: North Carolina Association of Retarded Citizens, North Carolina United Cerebral Palsy, Epilepsy Association of North Carolina, and North Carolina Society for Autistic Children.

The initial members of the Council shall include the appointed members of the Council on Mental Retardation and Developmental Disabilities who shall serve for a period equal to the remainder of their current terms on the Council on Mental Retardation and Developmental Disabilities four of whose terms expire June 30, 1973, four of whose terms expire June 30, 1974, two of whose terms expire June 30, 1975, and three of whose terms expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, the appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 169; c. 1117; 1977, c. 881, s. 3.)

Editor's Note. — The 1973 amendment substituted "30" for "21" in the first sentence, substituted "Fourteen" for "Seven" at the beginning of subdivision (1) of the first paragraph, added to subdivision (1) the provisions for seven representatives of the Department of Human Resources and substituted "Ten" for "Six" at the beginning of subdivision (2) of the first paragraph.

The 1977 amendment substituted "36 members" for "30 members" in the first sentence of the first paragraph, and rewrote subdivisions (1), (2) and (3) of the first paragraph so as to provide for 15, rather than 14, members from the General Assembly and State government agencies, 12, rather than 10, consumer members, and nine, rather than six, members at large.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-180. Governor's Advisory Council on Aging — creation, powers and duties. — There is hereby created the Governor's Advisory Council on Aging of the Department of Human Resources. The Advisory Council on Aging shall have the following functions and duties:

(1) To make recommendations to the Secretary of Human Resources aimed at improving human services to the elderly;

(2) To study ways and means of promoting public understanding of the problems of the aging, to consider the need for new State programs in the field of aging, and to make recommendations to and advise the Secretary on these matters;

(3) To advise the Department of Human Resources in the preparation of a plan describing the quality, extent and scope of services being provided, or to be provided, to elderly persons in North Carolina;

(4) To study the programs of all State agencies which provide services for elderly persons and to advise the Secretary of Human Resources on the coordination of programs to prevent duplication and overlapping of such services;

(5) To advise the Secretary of Human Resources upon any matter which the Secretary may refer to it. (1973, c. 476, s. 171; 1977, c. 242, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation. — The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 30 members, 26 members to be appointed by the Governor, two members to be appointed by the Lieutenant Governor, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: eight members from State government agencies as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; the Chairman of the Employment Security Commission; the Executive Secretary of the Teachers' and State Employees' Retirement System; the Commissioner of Labor; one representative of the Department of Public Education; the Department of Human Resources Special Assistant for Coordination of Nutrition Programs; and one representative of the Department of Natural Resources and Community Development; the Director of the School of Public Health of the University of North Carolina; the Director of Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large shall be actual consumers of services of programs supported through Title III and Title VII of the Older Americans' Act of 1965 as amended, including low income, and minority older persons, at least in proportion to the number of minority older persons in the State. The Governor shall appoint 15 members at large who shall meet these qualifications. The four remaining members at large, two of whom shall be appointed by the Lieutenant Governor and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special needs of the elderly. The Council shall meet preferably bimonthly, but at least quarterly.

Present at-large members of the Council shall serve for a period equal to the remainder of their current terms on the Governor's Advisory Council on Aging,

two of whose appointments expire June 30, 1975, two of whose appointments expire June 30, 1976, six of whose appointments expire June 30, 1977, and one whose appointment expires June 30, 1978. Two new members at large shall be appointed whose terms shall expire June 30, 1975, one to be appointed by the Governor and one to be appointed by the Lieutenant Governor; two new members at large shall be appointed whose terms shall expire June 30, 1976, one to be appointed by the Governor and one to be appointed by the Speaker of the House of Representatives; four new members at large shall be appointed whose terms shall expire June 30, 1978, two to be appointed by the Governor, one to be appointed by the Lieutenant Governor, and one to be appointed by the Speaker of the House of Representatives; thereafter, at-large members shall be appointed for full four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4.)

Editor's Note. — The 1975 amendment rewrote the first sentence, substituted "eight members" for "seven members" and inserted "the Department of Human Resources Special Assistant for Coordination of Nutrition Programs" in the second sentence, substituted the language beginning "and 19 members at large" for "and 11 members at large, all of whom shall be over the age of 65, four of whom shall derive their chief source of income from social security payments" at the end of the second sentence and added the third, fourth and fifth sentences, all in the first paragraph. The amendment also rewrote the second paragraph.

The first 1977 amendment substituted "Advisory" for "Coordinating" in the title of the Council.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-181.1. Division of Aging — creation, powers and duties. — There is hereby created within the office of the Secretary of the Department of Human Resources a Division of Aging, which shall have the following functions and duties:

(1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Human Resources for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;

(2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;

(3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;

(4) To serve as the agency through which various public and nonpublic

organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;

(5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;

(6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;

(7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;

(8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects; and

(9) To establish or help to establish demonstration programs of services to the aging.

The Division shall function under the authority of the Department of Human Resources and the Secretary of Human Resources as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary. (1977, c. 242, s. 4.)

§ 143B-181.2. Assistant Secretary for Aging — appointment and duties. — (a) The Secretary of Human Resources shall appoint an assistant secretary in the Department of Human Resources, whose title shall be the Assistant Secretary for Aging. The Assistant Secretary for Aging shall monitor all aging programs in the Department of Human Resources and shall have such powers and duties as are conferred on him by this Part and delegated to him by the Secretary of Human Resources.

(b) The Assistant Secretary for Aging, through the appropriate subunits of the Department of Human Resources, shall, at the request of the Secretary, identify program needs for the aging, recommend program changes, coordinate intra-departmental program efforts, represent the Secretary in aging matters before boards and commissions, the General Assembly and the public, coordinate program contacts between the Department of Human Resources and private, State and federal agencies, initiate special studies on aging matters, and have the responsibility of assuring that services are delivered to the elderly of the State. (1977, c. 242, s. 4.)

Part 15. Mental Health Advisory Council.

§ 143B-182. Mental Health Advisory Council — creation, powers and duties. — There is hereby created the Mental Health Advisory Council of the Department of Human Resources. The Mental Health Advisory Council shall have the following functions and duties:

(1) To consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State; and

(2) The Mental Health Advisory Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it.

(3) Additionally, the Mental Health Advisory Council shall consult with the Secretary of Human Resources in administering a State plan for the provision of comprehensive mental health services and the Council is empowered to engage in any activities specified in federal mental health legislation for the purpose of meeting requirements set by

federal authorities as a condition to receiving federal aid. (1973, c. 476, s. 174; 1977, c. 694, ss. 1, 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "Advisory" in the title of the Council and added subdivision (3).

§ 143B-183. Mental Health Advisory Council — members; selection; quorum; compensation. — The Mental Health Advisory Council of the Department of Human Resources shall consist of no more than 35 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Nine members from the General Assembly and State government agencies as follows: two members of the Senate nominated by the President of the Senate, two members of the House of Representatives nominated by the Speaker of the House of Representatives, two representatives of the Department of Public Education, two representatives of the Department of Correction, and one representative of the Department of Military and Veterans Affairs;

(2) Three members designated by the respective associations to the Governor for appointment — one member representing the North Carolina Personnel and Guidance Association, one member representing the North Carolina Council on Developmental Disabilities and one member representing the North Carolina Council of Family Service Agencies; and

(3) Up to 23 at-large members. — These appointments shall be made pursuant to current federal rules and regulations which prescribe the selection process and demographic blend as a necessary condition to the receipt of federal aid. At the Governor's request, the Department of Human Resources shall render to the Governor such advice and assistance as may be required to make the proper appointments to meet the federal requirements. The Governor shall exercise his power of appointment to reconstitute or fill vacancies on the Council in a manner that will meet current federal rules and regulations concerning the Council.

The initial members of the Council shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Council members who are members of the General Assembly shall receive subsistence and travel allowance at the rate set forth in G.S. 120-3.1(b) and (c). Council members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department. (1973, c. 476, s. 175; 1977, c. 694, ss. 3-7.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, in the first paragraph, inserted "Advisory" in the title of the Council, substituted "no more than 35 members" for "21 members" in the first sentence, substituted "Department of Correction" for "Department of

Social Rehabilitation and Control" in subdivision (1) and "Council on Developmental Disabilities" for "Council on Mental Retardation" in subdivision (2), rewrote subdivision (3) and rewrote the fifth paragraph.

Part 16. Governor's Council on Employment of the Handicapped.

§§ 143B-184, 143B-185: Transferred to §§ 143B-412, 143B-413 by Session Laws 1977, c. 872, s. 2.

State Government Reorganization. — The Governor's Council on Employment of the Handicapped was transferred by a Type I transfer to the Department of Administration by Session Laws 1977, c. 872, s. 1, effective July 1, 1977.

Part 17. Governor's Advocacy Council on Children and Youth.

§§ 143B-186, 143B-187: Transferred to §§ 143B-414, 143B-415 by Session Laws 1977, c. 872, s. 6, effective July 1, 1977.

State Government Reorganization. — The Governor's Advocacy Council on Children and Youth was transferred by a Type I transfer to the Department of Administration by Session Laws 1977, c. 872, s. 5, effective July 1, 1977.

Part 19. Commission for Human Skills and Resource Development.

§ 143B-197. Legislative intent. — The General Assembly hereby declares that it shall be the policy of this State insofar as possible to train and utilize qualified individuals residing in local communities to make available adequate counseling and referral services for all North Carolinians. (1973, c. 961, s. 1.)

§ 143B-198. Creation. — There is hereby created within the Department of Human Resources the Commission for Human Skills and Resource Development (hereinafter called the "Commission") which shall provide the mechanism in each county in this State to develop counseling abilities among community resource personnel in helping professions and other appropriate persons. The purpose of this Commission shall be to develop programs to sensitize persons and groups working with individuals and families, to increase competence in counseling skills of selected persons, and to consider ways of dealing with factors which adversely affect the quality of life in North Carolina. (1973, c. 961, s. 2.)

§ 143B-199. Membership; appointment; terms; vacancies. — The Commission shall consist of 20 members. Fourteen members shall be appointed by the Governor, and six members shall be appointed from the General Assembly, three by the Speaker of the House of Representatives and three by the President of the Senate. Of the 14 members to be appointed by the Governor for the first Commission, four shall be appointed for a term of one year, five for a term of three years and five for a term of five years. As the terms of these Commissioners expire, the Governor shall appoint their successors for terms of five years. The six members appointed from the General Assembly shall serve for a term of two years. Any vacancy arising for any cause other than the expiration of the term shall be filled by the original appointing authority for the unexpired term. The Governor shall designate the chairman from among the membership of the Commission. (1973, c. 961, s. 3.)

§ 143B-200. Appointment of Commission staff. — A chief administrator and executive officer, a planning officer, a secretary, and other appropriate staff shall be appointed according to the Executive Organization Act of 1973. No person employed by the Commission shall be a member thereof. (1973, c. 961, s. 4.)

§ 143B-201. Power to make rules, enter contracts and accept gifts. — The Commission shall make all rules and regulations necessary to its purpose as stated in G.S. 143B-197 and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to adopt and accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the interest and purpose of such Commission. (1973, c. 961, s. 5.)

§ 143B-202. Authority to receive grants-in-aid. — The Commission is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this part. (1973, c. 961, s. 6.)

§ 143B-203. Compensation of members. — The members of the Commission shall receive no compensation for their services; but their travel and per diem expenses shall be paid as authorized for members of State Commissions under G.S. 138-5. (1973, c. 961, s. 7.)

Part 20. Commission of Anatomy.

§ 143B-204. Commission of Anatomy — creation; powers and duties. — There is hereby created the Commission of Anatomy of the Department of Human Resources with the power and duty to adopt rules and regulations for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to G.S. 90-216.6 and to be a donee of a body or parts thereof pursuant to Article 15A of Chapter 90 of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules and regulations adopted by the Commission. (1975, c. 694, s. 2.)

§ 143B-205. Commission of Anatomy — members; selection; term; chairman; quorum; meetings. — The Commission of Anatomy shall consist of five members, one from the membership of the State Board of Mortuary Science, and one each from the University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary of Human Resources shall appoint from such recommendations a member to the Commission. The president of the State Board of Mortuary Science shall appoint one member from that Board to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The secretary shall determine the terms of the original members.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The secretary shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

The Commission shall elect a chairman annually from its own membership.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Commission shall meet at any time and place within the State at the call of the chairman or upon the written request of three members.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1975, c. 694, s. 2.)

§ 143B-206. Commission of Anatomy — reference to former Board of Anatomy in testamentary disposition. — A testamentary disposition of a body or part thereof to the former Board of Anatomy shall be deemed in all respects to be a disposition to the Commission of Anatomy. (1975, c. 694, s. 2.)

Part 21. Youth Services Advisory Committee.

§ 143B-207. Committee created; duties. — There is hereby created the Youth Services Advisory Committee of the Department of Human Resources to advise the Secretary of Human Resources in the development of youth services' programs. The Youth Services Advisory Committee shall have the following duties:

(1) To study available literature and research findings concerning juvenile delinquency, its causes, and various treatment models, and to make recommendations to the Secretary of Human Resources regarding programs which will provide effective treatment and rehabilitation for children in institutions and in community-based programs;

(2) To advise the Secretary in encouraging the development of delinquency prevention programs and community-based services by private groups so that such programs can be responsive to local needs, so that local leadership and private groups can be responsible for their programs, so that programs which meet State standards can be assisted by available State and federal funds, and so that available private funds can be utilized with State, federal and local government funds where appropriate;

(3) To advise the Secretary of its recommendations for the development of a program which would coordinate the resources of State government within the appropriate departments in order to provide technical assistance to local areas within the State in planning delinquency prevention programs and community-based services for youth;

(4) To advise the Secretary of its recommendations for program evaluation standards for delinquency prevention programs, community-based services, both residential and non-residential, and institutional treatment programs;

(5) To advise the Secretary in the development of delinquency prevention programs and community-based services under public auspices where there is no local private leadership;

(6) To make recommendations to the Secretary of Human Resources for transmittal to the Juvenile Justice Planning Committee as it develops a comprehensive plan for juvenile justice;

(7) To make recommendations to the Secretary of Human Resources for transmittal to the Social Services Commission when it considers proposed standards for the placement and supervision of delinquent children under the authority of G.S. 143B-153(2)c;

(8) To review for the Secretary of Human Resources any applications referred to it for federal funds for training schools, delinquency prevention programs and community-based services and to make recommendations to the Secretary on the Department's priorities for such proposed programs and the appropriate use of available federal funds;

(9) To advise and assist the Secretary of Human Resources on any other

matter which the Secretary may refer to it. (1975, c. 929; 1977, c. 627, s. 1.)

Cross Reference. — For provisions as to delinquency prevention and youth services, codified from Session Laws 1975, c. 929, which 1975 act enacted this section and § 143B-208, see §§ 7A-289.13 through 7A-289.16.

Editor's Note. — The 1977 amendment rewrote this section, which formerly provided for the Technical Advisory Committee on Delinquency Prevention and Youth Services.

This Article was enacted by Session Laws 1975, c. 929, as §§ 143B-206 and 143B-207. The remainder of Session Laws 1975, c. 929, enacted as §§ 143B-204, 143B-205, and 143B-208 to 143B-210, is codified as §§ 7A-278 and 7A-289.13 to 7A-289.16.

§ 143B-208. Composition of Committee; terms; vacancies; meetings; expenses, etc. — The Youth Services Advisory Committee shall consist of 11 members. The Governor shall appoint five members: one person who represents a private delinquency prevention program and four concerned citizens who have some knowledge about juvenile delinquency, community-based services, and training schools. Two members shall be the Director of the Administrative Office of the Courts and the Superintendent of Public Instruction or their designees.

Four members shall be appointed from the General Assembly, two by the Speaker of the House of Representatives and two by the President of the Senate, who shall be members of the General Assembly with an interest in youth problems.

Initial appointments to the Committee shall be made as soon as practical after June 20, 1977, but no later than July 1, 1977, for terms that expire on July 1, 1979. Thereafter, the appointment of members shall be made as provided above for terms of two years. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Committee shall meet at least once in each quarter and may hold special meetings at any time and place within the State on the call of the chairman or upon the written request of five members. A majority of the Committee members shall constitute a quorum for the transaction of business. The Governor shall select the chairman who shall serve at the pleasure of the Governor. The Committee shall elect a vice-chairman who shall serve for a term of one year.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Governor shall have the power to remove any member of the Committee from office for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-16.

All necessary clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources. (1975, c. 929; 1977, c. 627, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section, which formerly provided for the Technical Advisory Committee on Delinquency Prevention and Youth Services.

Part 22. Human Tissue Advisory Council.

§ 143B-209. Creation of Council; composition; duties; meetings, etc. — (a) There is created a Human Tissue Advisory Council. There shall be 13 members of this Council, consisting of the following:

(1) A representative from each of the following institutions:
The Bowman Gray School of Medicine,
The Duke University School of Medicine,
The North Carolina Association of the Blind,
The North Carolina Eye and Human Tissue Bank,

The North Carolina Funeral Directors' Association,
The North Carolina Hospital Association,
The North Carolina Kidney Foundation,
The North Carolina Medical Society,
The University of North Carolina at Chapel Hill School of Medicine,
The East Carolina University School of Medicine;

(2) One member appointed by the Speaker of the House of Representatives;
(3) One member appointed by the President of the Senate; and
(4) The Secretary of Human Resources or his representative.

The Council shall elect its chairman from among its membership.

(b) The Council shall have the duty to advise, confer with, and make recommendations to the Secretary of Human Resources relating to the establishment and conduct of the Coordinated Program for Human Tissue Donations. The Council shall meet upon the call of its chairman or upon agreement of a majority of its membership but shall meet not fewer than three times a year.

(c) The Secretary shall furnish to the Council such secretarial, clerical and other services as he deems necessary. Members of the Council shall serve without compensation but shall be reimbursed for travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1975, c. 974.)

Part 23. North Carolina Drug Commission.

§ 143B-210. North Carolina Drug Commission — creation; powers and duties. — There is hereby created the North Carolina Drug Commission of the Department of Human Resources, which is designated as the single State agency to coordinate all State efforts relating to drug abuse prevention, education, control, treatment, and rehabilitation, and which shall have the following functions and duties:

(1) To advise the Department in the coordination of all State efforts related to drug abuse prevention, education, control, treatment, and rehabilitation to the end that the effort to control drug abuse shall be efficiently and effectively administered and duplicating and overlapping efforts eliminated;
(2) To review all requests by non-State agencies to federal agencies for funds to finance drug abuse prevention, education, control, treatment, or rehabilitation programs, with the requirement that such federal funds may be spent within the State of North Carolina only when approved by the North Carolina Drug Commission except in those instances in which requirements for approval by the Drug Commission violate federal law or regulation;
(3) To advise in the coordination of the State's efforts with the efforts of local and municipal governments within the State and with the efforts of other states and the federal government;
(4) To assist private agencies and community organizations by providing needed coordination and information;
(5) To assist in the planning and supervision of public informational programs related to drug abuse;
(6) To assist with the formulation and coordination of programs relating to the early diagnosis, treatment, and rehabilitation of drug abusers;
(7) To assist with the formulation and coordination of training and informational programs for State employees and others;
(8) To advise in the coordination of the State's efforts to obtain federal funds available for drug abuse programs;
(9) To establish standards and adopt rules and regulations:
    a. For the licensing of drug treatment facilities as provided by G.S. 90-109;

b. Relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100;

c. As may be required by the federal government but not inconsistent with the laws of this State for grants-in-aid for drug abuse prevention, education, control, treatment and rehabilitation purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;

(10) To advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1977, c. 667, s. 2.)

Editor's Note. — Session Laws 1977, c. 667, s. 5, makes the act effective July 1, 1977.

§ 143B-211. North Carolina Drug Commission — review of programs; State Plan for Drug Abuse Prevention. — All drug abuse prevention, education, treatment, rehabilitation and evaluation programs which are implemented after June 30, 1977, with appropriated moneys from the North Carolina General Assembly or the United States Congress shall be implemented only after review by the North Carolina Drug Commission and approval by the Secretary of Human Resources. Before any agency or organization, public or private, shall receive approval for program implementation from the Secretary, the Commission must make a finding that such programs are consonant with the North Carolina State Plan for Drug Abuse Prevention. (1977, c. 667, s. 2.)

§ 143B-212. North Carolina Drug Commission — members; selection; quorum; compensation. — The North Carolina Drug Commission of the Department of Human Resources shall consist of the following 21 voting members: the Attorney General or his designee, the Executive Officer of the State Board of Pharmacy, the Secretary of Correction or his designee, the Superintendent of Public Instruction or his designee, the Chairman of the Board of Governors of the North Carolina University System or his designee and the following persons who shall serve for a term of two years commencing July 1 of each odd-numbered year: a member of the North Carolina Board of Medical Examiners appointed by the Board of Medical Examiners, a member of the North Carolina State Board of Dental Examiners appointed by the Board of Dental Examiners, a representative of the North Carolina Hospital Association appointed by said association's governing body, a member of the North Carolina House of Representatives appointed by the Speaker of the House of Representatives, a member of the North Carolina Senate appointed by the President Pro Tempore of the Senate, and 11 persons appointed by the Governor. The following persons shall serve as ex officio members of the Commission without vote: the directors of the following divisions of the Department of Human Resources or their designees: youth services, mental health, health, and vocational rehabilitation.

The Governor shall select his appointees to include representation for (i) nongovernmental organizations and local public agencies concerned directly or indirectly with drug abuse, such as groups in frequent contact with drug abusers, local citizens groups, employee groups, labor and management, other provider, consumer, and consumer advocate groups, local elected officials, courts, local law-enforcement agencies, and (ii) the minority, poverty, and major population groups which are significantly affected by the problems of drug abuse and which are to be served under the comprehensive State plan for drug abuse. The Commission shall be so constituted as to give representation to different geographical areas of the State.

Notwithstanding the provisions of G.S. 143B-13(a) relating to existing Commission members, the Governor shall appoint the initial members of the Drug Commission in accordance with the foregoing membership requirements.

At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors, with the exception of those from State agencies, shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973 with the exception that the provision of G.S. 143B-13(c) shall only apply to State employees and shall not apply to other members of the Commission.

The Governor shall designate a member of the Commission to serve as chairman at the pleasure of the Governor.

Legislative members of the Commission shall be compensated in accordance with the provisions of G.S. 120-3.1. Public members of the Commission shall be compensated in accordance with the provisions of G.S. 138-5. State officers or employees who are members of the Commission shall be compensated in accordance with the provisions of G.S. 138-6.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1977, c. 667, s. 2.)

Part 24. North Carolina Council for the Hearing Impaired.

§ 143B-213. North Carolina Council for the Hearing Impaired — responsibilities of Council. — There is hereby created the North Carolina Council for the Hearing Impaired of the Department of Human Resources, which shall have the following duties:

(1) To advocate services affecting hearing impaired individuals in the areas of public services, health care, and educational opportunity;

(2) To act as a bureau of information for the hearing impaired to State agencies and public institutions providing health care and educational services to the hearing impaired, to local agencies and programs;

(3) To serve as an advisory body to the Secretary of the Department of Human Resources on the needs of the hearing impaired by preparing an annual report which reviews the status of all State services to the hearing impaired within North Carolina, and to recommend priorities to the Department for the development and coordination of services to this population. (1977, c. 991, s. 1.)

Editor's Note. — Session Laws 1977, c. 991, s. 3, makes the act effective July 1, 1977.

§ 143B-214. North Carolina Council for the Hearing Impaired — members. — (a) The North Carolina Council for the Hearing Impaired shall consist of 18 members as follows: five representatives of the Department of Human Resources to be designated by the Secretary of Human Resources from the areas of health services, mental health services, social services, the North Carolina Schools for the Deaf, and vocational rehabilitation services; one representative of the Department of Public Instruction, to be designated by the

Superintendent of Public Instruction, from the area of exceptional children; the Director of the Employment Security Commission, or his designee; one representative of the Department of Administration to be designated by the Secretary of the Department of Administration from the area of special personnel projects; the President of the North Carolina Association of the Deaf, or his designee; the President of the North Carolina Registry of Interpreters for the Deaf, or his designee; the President of the North Carolina Parents Association of the Deaf, or his designee; five additional members who are hearing impaired to be appointed by the Governor from nominations submitted by the North Carolina Association of the Deaf; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; one member of the North Carolina Senate to be appointed by the President of the Senate. Legislative members shall be appointed for terms of two years. The five hearing impaired members appointed by the Governor and the three representatives of consumer organizations shall serve on the Council for terms of four years, provided that [with respect to] members initially appointed, the Governor shall designate two members of the members initially appointed who shall serve terms of five years, two who shall serve terms of four years, two who shall serve terms of three years and two who shall serve terms of two years.

(b) The terms of the members first appointed shall commence July 1, 1977. At the expiration of the term of any member of the Council, his successor shall be appointed for a term of four years except for the members of the House and the Senate who shall serve terms of two years.

Vacancies occurring other than by expiration of term in the membership of the Council shall be filled by the Governor, the Speaker of the House, the Lieutenant Governor or the appropriate appointing authority. No person shall be eligible to serve more than two successive terms other than the representatives of the above named State agencies. (1977, c. 991, s. 1.)

§ 143B-215. North Carolina Council for the Hearing Impaired — chairman; reimbursement of members. — The chairman of the Council shall be designated by the Secretary of Human Resources from the appointed members of the Council, and shall hold this office for not more than four years. The Council shall meet at the call of the chairperson, but not less than four times a year.

The members of the Council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties in accordance with G.S. 138-5. (1977, c. 991, s. 1.)

§ 143B-216. North Carolina Council for the Hearing Impaired — State Coordinator; duties. — (a) There shall be established the position of State Coordinator of Services for the Hearing Impaired who shall be the chief executive officer of the Council. The State Coordinator shall be responsible to the Secretary of Human Resources.

(b) The Coordinator, with the advice of the Council, and as directed by the Secretary of Human Resources shall:

(1) Plan and direct the establishment of at least one community service center for the hearing impaired in each of the Department of Human Resources regions in North Carolina, and directly supervise the activities of these centers;

(2) Promote accessibility of all governmental services to hearing impaired citizens in North Carolina including those hearing impaired persons with multiple disabilities;

(3) Identify agencies, both public and private which provide community services, evaluate the extent to which they make services available to

hearing impaired people, and cooperate with the agencies in coordinating and extending these services;

(4) Provide for the mutual exchange of ideas and information on services for hearing impaired people between federal, State and local governmental agencies, and private organizations and individuals;

(5) Survey the needs of the hearing impaired population in North Carolina, and assist the North Carolina Council for the Hearing Impaired in the preparation of the annual report to the Secretary of Human Resources;

(6) Maintain a listing of persons qualified in various types of interpreting, and make this information available to local, State, federal and private organizations;

(7) Promote the training of interpreters for the hearing impaired to a level which will enable them to meet national and/or State certification requirements;

(8) Serve as an advocate for the rights of hearing impaired people.

(c) In selecting the State Coordinator of Community Services for the Deaf, the Secretary of Human Resources shall select an individual who is fluent in the American sign language of the deaf and shall give consideration and priority to qualified applicants who are hearing impaired.

(d) The Secretary of the Department of Human Resources is authorized to arrange for clerical or other assistance as may be required by the Council. (1977, c. 991, s. 1.)

§ 143B-216.1. North Carolina Council for the Hearing Impaired — annual report. — The North Carolina Council for the Hearing Impaired shall make an annual report to the Secretary of Human Resources, as described in G.S. 143B-213. (1977, c. 991, s. 1.)

§ 143B-216.2. North Carolina Council for the Hearing Impaired — assistance of other agencies. — The Council may request and shall receive from any department, division, board, bureau, commission, or agency of the State or of any political subdivision thereof such assistance and data as might be needed to enable it to properly carry out its activities under this Article. (1977, c. 991, s. 1.)

§ 143B-216.3. North Carolina Council for the Hearing Impaired — plan for community services for hearing impaired. — The Secretary of Human Resources shall develop a short-range plan during the 1977-1979 biennium for implementing community services for the hearing impaired based upon recommendations of the State Council for the Hearing Impaired. The Secretary shall insure that long-range planning is conducted which shall include a description of the locations and geographic service areas for such centers, the personnel needs, and strategies for coordinating service providers at State and local levels having contact with the deaf and hearing-impaired population. (1977, c. 991, s. 1.)

§ 143B-216.4. North Carolina Council for the Hearing Impaired — functions of service centers. — The purposes of community service centers for the hearing impaired shall be as follows:

(1) To inform hearing impaired persons and their families of their rights to services offered locally and to coordinate their referral to the appropriate organization;

(2) To coordinate communication between hearing impaired persons and the desired agency or organization, and to promote the accessibility of community services to hearing impaired persons;

(3) To coordinate the provision of interpreting services to hearing impaired persons in community colleges and technical institutes;
(4) To promote expanded adult educational opportunities for hearing impaired persons in community colleges and technical institutes;
(5) To coordinate the provision of instruction in sign language to persons in community agencies;
(6) To inform interested staff of community and professional organizations about the nature of deafness and the capabilities of hearing impaired persons;
(7) To provide services to families and employers of hearing impaired persons, and to agencies which provide services to the hearing impaired;
(8) To serve as an advocate for the rights and needs of people with hearing impairments, including hearing-impaired persons having multiple disabilities (i.e., deaf-blind);
(9) To provide services to hearing impaired persons regardless of income, age, or employability;
(10) To help hearing impaired citizens to become self-sufficient in meeting their needs in the community. (1977, c. 991, s. 1.)

§ 143B-216.5. North Carolina Council for the Hearing Impaired — receipt of moneys. — (a) The Department of Human Resources may receive moneys from any source, including federal funds, gifts, grants, and bequests which shall be expended for the purposes designated in this Part.

(b) The Secretary of the Department of Human Resources is hereby authorized to designate an existing division with the Department of Human Resources to provide statewide services to the hearing impaired as specified in this Article. (1977, c. 991, s. 1.)

Part 25. Nutrition Advisory Committee.

§ 143B-216.6. Nutrition Advisory Committee — appointment; terms; vacancies; per diem, etc.; chairman. — To assist the Secretary of the Department of Human Resources in carrying out these duties [his duties under G.S. 130-9.3], the Governor shall appoint a Nutrition Advisory Committee, composed of eight members as follows: one from the field of agriculture, one from the field of economics, one from the field of education, one from the practice of medicine, one from the food industry, one from the field of nutrition, one from the field of social services, and one member at large. Each member shall hold office for a term of two years, commencing on September 1, 1973, and biennially thereafter and until his successor is appointed, except that the term of the members first taking office shall expire, as designated at the time of appointment, four at the end of the first year, and four at the end of the second year. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Committee members shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5. The Governor shall designate one member of the Committee to serve as chairman at his pleasure. (Resolution 112, 1973, p. 1413.)

§ 143B-216.7. Nutrition Advisory Committee — duties and powers. — The Committee shall advise the Secretary concerning the execution of the duties stated above. It may request any information relevant to nutrition from all State departments, agencies and divisions and said departments, agencies and divisions shall comply with the request. (Resolution 112, 1973, p. 1413.)

ARTICLE 5.

Department of Military and Veterans Affairs.

Part 1. General Provisions.

§§ 143B-246 to 143B-251: Repealed by Session Laws 1977, c. 70, s. 33, effective April 1, 1977.

Cross Reference. — As to transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see § 143A-96.1.

Part 2. Veterans Affairs Commission.

§§ 143B-252, 143B-253: Transferred to §§ 143B-399, 143B-400 by Session Laws 1977, c. 70, ss. 24, 25, effective April 1, 1977.

Part 3. Energy Division.

§§ 143B-254, 143B-255: Repealed by Session Laws 1977, c. 23, s. 3.

Cross Reference. — For present provisions as to the Energy Division, now in the Department of Commerce, see §§ 143B-448, 143B-449.

§§ 143B-256 to 143B-259: Reserved for future codification purposes.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-260. Department of Correction — creation. — There is hereby created and established a department to be known as the Department of Correction with the organization, powers, and duties hereafter defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 2.)

Editor's Note. — Session Laws 1973, c. 1262, s. 87, makes the act effective July 1, 1974.

§ 143B-261. Department of Correction — duties. — It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and juvenile delinquents and thereby to reduce the rate and cost of crime and delinquency. (1973, c. 1262, s. 3.)

§ 143B-261.1. Department of Correction — rules and regulations. — The Department of Correction shall adopt rules and regulations related to the conduct, supervision, rights and privileges of persons in its custody or under its supervision. Such rules and regulations shall be filed with and published by the office of the Attorney General and shall be made available by the Department for public inspection. The rules and regulations shall include a description of the organization of the Department. A description or copy of all forms and instructions used by the Department, except those relating solely to matters of internal management, shall also be filed with the office of the Attorney General. (1975, c. 721, s. 2.)

Editor's Note. — Session Laws 1975, c. 721, s. 4, makes the act effective Feb. 1, 1976.

§ 143B-262. Department of Correction — functions. — (a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders and juvenile delinquents including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Department of Correction and Commission of Correction,
(2) The State Board of Youth Development,
(3) The State Probation Commission,
(4) The State Board of Paroles,
(5) The Interstate Agreement on Detainers, and
(6) The Uniform Act for Out-of-State Parolee Supervision. (1973, c. 1262, s. 4.)

Editor's Note. — Article 12 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 1262, s. 86. The same 1973 act enacted this Article.

§ 143B-263. Department of Correction — head. — The Secretary of Correction shall be the head of the Department. (1973, c. 1262, s. 5.)

§ 143B-264. Department of Correction — organization. — The Department of Correction shall be organized initially to include the Parole Commission, the Board of Correction, the Division of Prisons, the Division of Youth Development, the Division of Adult Probation and Parole, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 1262, s. 6.)

Part 2. Board of Correction.

§ 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services. — The Board of

Correction shall consider and advise the Secretary of Correction upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Correction in the development of major programs and recommend priorities for the programs within the Department.

The Board of Correction shall have such other responsibilities and shall perform such other duties as may be specifically given to it by the Secretary of Correction.

The Board of Correction shall consist of nine members appointed by the Governor to serve at his pleasure. One member shall be a psychiatrist or a psychologist, one an attorney with experience in the criminal courts, one a judge in the General Court of Justice, five members appointed at large, and the Secretary of Correction who shall be a member and chairman ex officio. The initial composition of the Board of Correction shall include the chairman of the present State Probation Commission, the chairman of the present State Commission of Correction, and the chairman of the present State Board of Youth Development.

Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Board of Correction shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 7.)

Part 3. Parole Commission.

§ 143B-266. Parole Commission — creation, powers and duties. — (a) There is hereby created a Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North Carolina. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5.)

Editor's Note. — Session Laws 1973, c. 1262, from which this Article was codified, became effective July 1, 1974. The Executive Organization Act of 1973, Session Laws 1973, c. 476, became effective July 1, 1973.

The 1975 amendment deleted "in any prison, jail, or penal institution of this State or its political subdivisions" following "court of this State" in the first sentence of subsection (a).

The first 1977 amendment, effective Oct. 1, 1977, added subsection (d).

The second 1977 amendment, effective Oct. 1, 1977, substituted "work release or indeterminate-sentence release" for "work release, indeterminate-sentence release, and release of youthful offenders" in the second sentence of subsection (b).

G.S. 148-49.8, referred to in the second sentence of subsection (b), was repealed by Session Laws 1977, c. 732, s. 1. For present provisions covering the subject matter of the repealed section, see § 148-49.15.

Session Laws 1977, c. 614, s. 10, provides: "This act shall become effective on October 1, 1977, and shall apply to offenses committed on and after that date."

Session Laws 1977, c. 614, s. 9, contains a severability clause.

Section 148-33.1(b) read in conjunction with subsection (b) of this section makes it clear that all releasing authority for work-release privileges for any inmate serving a term greater than five years rests ultimately in the Parole Commission. State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services. — The Parole Commission shall consist of five full-time members, and the Secretary of Correction who shall serve as an ex officio, nonvoting member. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1977. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

A majority of the full-time members of the Commission shall constitute a quorum for the transaction of business.

The full-time members of the Commission shall receive the salary fixed by the Governor and approved by the Advisory Budget Commission and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote the section.

§§ 143B-268 to 143B-274: Reserved for future codification purposes.

ARTICLE 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

§ 143B-275. Department of Natural Resources and Community Development — creation. — There is hereby recreated and reconstituted a department known as the Department of Natural Resources and Community Development with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 11; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-276. Department of Natural Resources and Community Development — duties. — It shall be the duty of the Department:

(1) To provide for the management and protection of the State's natural resources and environment;

(2) To promote and assist in the orderly development of North Carolina counties and communities; and

(3) To provide job training and promote employment for economically disadvantaged persons. (1973, c. 1262, s. 12; 1977, c. 198, s. 10; c. 771, s. 1.)

Editor's Note. — Both 1977 amendments rewrote this section. The section is set out above as it appears in the second 1977 amendatory act.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-277. Department of Natural Resources and Community Development — functions. — The Department of Natural Resources and Community Development, except as otherwise provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to the protection and management of the natural resources and environment of the State, the orderly development of North Carolina's counties and communities, the job training of economically disadvantaged persons and the promotion of employment for economically disadvantaged persons;

(2) All of the functions, powers, duties and obligations vested in the Department of Natural and Economic Resources and in any agency, commission, board, council or sub-part of the Department of Natural and Economic Resources all of which are hereby transferred to and vested in the Department of Natural Resources and Community Development; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor or conferred by the Constitution and laws of this State. (1973, c. 1262, s. 13; 1977, c. 198, ss. 11, 12; c. 512, s. 6; c. 771, s. 2.)

Editor's Note. — The first 1977 amendment deleted a reference to "economic development" in subsection (a) of the section as it stood before the third 1977 amendment, and deleted references to the North Carolina Board of Science and Technology and the North Carolina National Park, Parkway, and Forest Development Commission in subsection (b) of

the section as it stood before the third 1977 amendment.

The second 1977 amendment, effective July 1, 1977, deleted a provision as to the Commercial and Sports Fisheries Advisory Board in subsection (b) of the section as it read before the third 1977 amendment.

The third 1977 amendment rewrote this section to read as set out above.

For transitional provisions applicable to the reorganization of the Department of Natural and Economic Resources as the Department of Natural Resources and Community Development, see Session Laws 1977, c. 771, ss. 16-21.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-278. Department of Natural Resources and Community Development — head. — The Secretary of Natural Resources and Community Development shall be the head of the Department. (1973, c. 1262, s. 14; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-279. Department of Natural Resources and Community Development — organization. — The Department of Natural Resources and Community Development shall be organized initially to include:

(1) The Board of Natural Resources and Community Development,
(2) The Wildlife Resources Commission,
(3) The Environmental Management Commission,
(4) The Marine Fisheries Commission,
(5) The North Carolina Mining Commission,
(6) The State Soil and Water Conservation Commission,
(7) The Sedimentation Control Commission,
(8) The Wastewater Treatment Plant Operators Certification Commission,
(9) The Earth Resources Council,
(10) The Community Development Council,
(11) The Forestry Council,
(12) The Parks and Recreation Council,
(13) The North Carolina Zoological Park Council,
(14) The Water Safety Council,
(15) The Air Quality Council,
(16) The Water Quality Council,
(17) The North Carolina Employment and Training Council,
(18) The Commercial and Sports Fisheries Committee,
(19) The John H. Kerr Reservoir Committee,
(20) The North Carolina Trails Committee,
(21) The North Carolina Land Policy Council, and

such divisions as may be established under the provisions of Article 1 of this Chapter. (1973, c. 1262, s. 15; 1977, c. 771, s. 3.)

Editor's Note. — The 1977 amendment divided this section into subdivisions, substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (1), substituted "Certification Commission" for "Commission of Certification" in subdivision (8), substituted "Community Development Council" for "Community and Economic Development" in subdivision (10), added subdivisions (17), (19), and (21), substituted "Article 1 of this Chapter" for "the Executive Organization Act of 1973" at the end of the section, and eliminated the following agencies: the North Carolina National Park, Parkway and Forest Development Council; the Science and Technology Committee; the Federal Reservoirs Local Committees; the Division of Environmental Management; the Division of Commercial and Sports Fisheries; the Division of Earth Resources; the Division of Community and Economic Development; the Division of

Forest Resources; and the Division of Parks and Recreation.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 2. Board of Natural Resources and Community Development.

§ 143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services. — The Board of Natural Resources and Community Development shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural Resources and Community Development in the development of major programs and recommend priorities for programs within the Department.

The Board of Natural Resources and Community Development shall perform such other duties as may be specifically given to it.

The Board of Natural Resources and Community Development shall consist of the following 25 members. The chairman and one elected member from each of the following Commissions: the Wildlife Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission; the chairman and one elected member from each of the following Councils: the Earth Resources Council, the Community Development Council, the Forestry Council, and the Parks and Recreation Council; 10 members-at-large appointed by the Governor to serve at his pleasure; and the Secretary of Natural Resources and Community Development who shall be a member and chairman ex officio.

The Board of Natural Resources and Community Development shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

Members of the Board shall receive per diem and necessary travel expenses in accordance with the provisions of G.S. 138-5.

All clerical and other services required by the Board shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 16; 1977, c. 771, ss. 4, 8.)

Editor's Note. — The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in the third paragraph and "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 3. Wildlife Resources Commission.

§ 143B-281. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees. — The Wildlife Resources Commission, as contained in Chapters 75A, 113 and 143 of the General Statutes and the laws of this State, is hereby transferred to the Department of Natural Resources and Community Development. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural Resources and Community Development and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission and the employees of the Commission shall be employed as now provided in G.S. 143-246 of the laws of this State.

Notwithstanding any provision of the Executive Organization Act of 1973 to the contrary, the Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural Resources and Community Development to the end that the independence of the Wildlife Resources Commission be preserved, the Executive Organization Act of 1973 shall not be construed as amending or repealing the provisions of this section. (1973, c. 1262, s. 17; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and second sentences of the first paragraph and in the second paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 4. Environmental Management Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-282. Environmental Management Commission — creation; powers and duties. — There is hereby created the Environmental Management Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:
   a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;
   b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established;
   c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
   d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3;
   e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3;
   f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111;
   g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112;
   h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112;

i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3;
j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56;
k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13;
l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15;
m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19;
n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29;
o. To halt dam construction pursuant to G.S. 143-215.29;
p. To grant final approval of dam construction work pursuant to G.S. 143-215.30;
q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31;
r. To direct the inspection of dams pursuant to G.S. 143-215.32;
s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107; and
t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter 143.

(2) The Environmental Management Commission shall have the power and duty to establish standards and adopt rules and regulations:
a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;
f. For the protection of sand dunes pursuant to Chapter 104B of the General Statutes of North Carolina; and
g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.

(3) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development.

(5) The Environmental Management Commission shall have the power to adopt regulations with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or

otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:

a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and regulations require; and

b. That the enforcement of the State laws and regulations would require the applicant to also obtain a State permit in addition to the required federal permit; and

c. That the enforcement of the State laws and regulations would be a duplication of effort on the part of the applicant; and

d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subdivision (5).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services. — (a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have had experience in water and air pollution control activities;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer experienced in the planning or conservation of water or air resources, or planning of water or sewer systems, or having experience in the field of industrial water supply or water and air pollution control, or have had practical experience in water supply and water and air pollution control problems of municipal government;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife activities of the State;

(6) One who shall, at the time of appointment, be actively connected with or knowledgeable in the groundwater industry;

(7) Five members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively connected with industrial production or have had experience in the field of industrial air and water pollution control; and

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government. The Governor, by executive order, shall promulgate criteria for determining the eligibility of persons under this section and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of law.

(b) Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation,

dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 20; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-284. Environmental Management Commission — officers. — The Environmental Management Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term whichever comes first. (1973, c. 1262, s. 21.)

§ 143B-285. Environmental Management Commission — meetings. — The Environmental Management Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 22.)

Part 5. Marine Fisheries Commission.

§ 143B-286. Marine Fisheries Commission — creation; powers and duties. — There is hereby created the Marine Fisheries Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the protection, preservation, and enhancement of the commercial and sports fisheries resources of the State.

(1) The Marine Fisheries Commission shall have the following powers and duties:

a. The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

1. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.

2. Seasons for taking fish.
3. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

b. To adopt regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds as provided in G.S. 113-201;

c. To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204;

d. In the interest of conservation of the marine and estuarine resources of North Carolina, the Commission may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Department as provided in G.S. 113-206(d);

e. To delegate to the Secretary of Natural Resources and Community Development the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Commission which may be affected by variable conditions as provided in G.S. 113-221(e);

f. To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this [Subchapter] as provided by G.S. 113-223;

g. To make relevant provisions of federal laws and regulations as State regulations pursuant to G.S. 113-228; and

h. To control activities in coastal wetlands as provided in G.S. 113-230.

(2) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina.

b. For the disposition of confiscated property as set forth in G.S. 113-137;

c. Governing all license requirements and taxes prescribed in Chapter 113, Article 14;

d. Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;

e. Governing the possession, transportation and disposition of seafood as provided in G.S. 113-164;

f. Regarding the disposition of the young of edible fish taken incidentally and unavoidably as provided by G.S. 113-185;

g. Regarding the leasing of public grounds for oysters and clam production as provided in G.S. 113-202;

h. Governing utilization of private fisheries as provided in G.S. 113-205;

i. Regarding permits to dredge or fill as provided in G.S. 113-229; and

j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.

(3) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

a. The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department.

b. The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties as provided in G.S. 113-182.

(4) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for coastal resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(5) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 24; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph, in paragraph e of subdivision (1), and in subdivision (5).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

The word "Subchapter" in subdivision (1)f of this section has been enclosed in brackets because this Chapter contains no Subchapters and the meaning of the reference is unclear.

§ 143B-287. Marine Fisheries Commission — members; selection; removal; compensation; quorum; services. — The Marine Fisheries Commission shall consist of 15 members appointed by the Governor. The Governor shall select the members so that all the following interests are represented:

(1) One who shall at the time of appointment be actively connected with and have experience in commercial fishing,

(2) One who shall at the time of appointment be actively connected with and have experience in wildlife or sport fishing,

(3) One who shall at the time of appointment have special training and expertise in marine ecology,

(4) One who shall at the time of appointment be actively connected with and have experience in coastal land development,

(5) One who shall at the time of appointment be actively connected with and have experience in seafood processing and distribution, and

(6) Ten at large, at least seven of whom shall at the time of appointment be residents of a legislative district which contains a county which is a part of the coastal area as that term is defined by G.S. 113A-103(2) and (3).

Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications.

The Governor shall have the power to remove any current member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. The Governor shall have the authority to remove any member of the Commission appointed after July 1, 1977.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 25; 1977, c. 512, s. 1; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, substituted "15" for "seven" in the first sentence of the first paragraph, rewrote subdivision (6) of the first paragraph so as to provide for 10, rather than two, at-large members, deleted the second sentence of the second paragraph, which read "Two of the initial members shall be appointed for two years, two for four years, and three for six years," inserted "current" near the beginning of the first sentence of the third paragraph and added the second sentence of the third paragraph.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 512, s. 2, provides: "The seven current members of the Marine Fisheries Commission shall serve the remainder of the terms for which they were appointed. Of the eight new at-large members whose appointments are authorized by section 1 of this act [§ 143B-287], four shall be appointed for terms ending July 1, 1979, and four shall be appointed for terms ending July 1, 1981. Thereafter each member shall be appointed for a term of six years."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-288. Marine Fisheries Commission — officers. — The Marine Fisheries Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term, whichever comes first. (1973, c. 1262, s. 26.)

§ 143B-289. Marine Fisheries Commission — meetings. — The Marine Fisheries Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. At least three of the four quarterly meetings of the Marine Fisheries Commission shall be held in the coastal area as that area is defined in G.S. 113A-103. (1973, c. 1262, s. 27; 1977, c. 512, s. 3.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added the second sentence.

Part 6. North Carolina Mining Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties. — There is hereby created the North Carolina Mining Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:

a. To act as the advisory body to the Interstate Mining Compact pursuant to G.S. 74-38(a);
b. To adopt and modify rules and regulations to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b);
c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61; and
d. To promulgate rules and regulations necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

(2) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 29; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services. — The North Carolina Mining Commission shall consist of nine members appointed by the Governor. The Commission shall be composed of the following: one member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.

The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 30.)

§ 143B-292. North Carolina Mining Commission — officers. — The North Carolina Mining Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 31.)

§ 143B-293. North Carolina Mining Commission — meetings. — The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 32.)

Part 7. Soil and Water Conservation Commission.

§ 143B-294. Soil and Water Conservation Commission — creation; powers and duties. — There is hereby created the Soil and Water Conservation Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has the following powers and duties:
   a. To approve petitions for soil conservation districts;
   b. To approve application for watershed plans; and
   c. Such other duties as specified in Chapter 139.
(2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 34; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (2).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services. — The Soil and Water Conservation Commission of the Department of Natural Resources and Community Development shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

(1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;
(2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;
(3) One member appointed at large by the Governor.

The initial members of the Commission shall be the members of the Soil Conservation Committee who shall serve for a period equal to the remainder of their current terms on the Soil Conservation Committee. At the end of the respective terms of office of the initial members of the Commission, their successors, except those members serving in an ex officio capacity, shall be appointed for terms of three years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 35; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-296. Soil and Water Conservation Commission — officers. — The Soil and Water Conservation Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 36.)

§ 143B-297. Soil and Water Conservation Commission — meetings. — The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 1262, s. 37.)

Part 8. Sedimentation Control Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-298. Sedimentation Control Commission — creation; powers and duties. — There is hereby created the Sedimentation Control Commission of the Department of Natural Resources and Community Development with the power and duty to develop and administer a sedimentation control program as herein provided.

The Sedimentation Control Commission has the following powers and duties:

(1) In cooperation with the Secretary of the Department of Transportation

and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.

(3) Conduct public hearings pursuant to G.S. 113A-54.

(4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.

(5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.

(6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54. (1973, c. 1262, s. 39; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings. — (a) There is hereby created in the Department of Natural Resources and Community Development the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) The Secretary of the Department of Natural Resources and Community Development, who shall be chairman, and who may designate some other officer in the Department to act in his stead;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);

(7) A member of the State Soil and Water Conservation Commission;

(8) A member of the Environmental Management Commission;

(9) A soil scientist from the faculty of North Carolina State University; and

(10) Two persons who shall be representatives of nongovernmental conservation interests.

(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions two, three, and four, as specified above, shall expire June 30, 1975; thereafter, the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for

inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(c) Compensation. — The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. — The Commission shall meet at the call of the chairman and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40; 1977, c. 771, s. 4.)

Section 113A-53, Subdivision (a)(1) and Subsection (b) as Amended by Session Laws 1973, c. 1417, Effective April 13, 1974. — Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and made effective on ratification, rewrote subdivision (1) of subsection (a) of 113A-53 to read as follows:

"(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;"

Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and effective on ratification, amended subsection (b) of § 113A-53 to read as follows:

"(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified in G.S. 113A-53(a), above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions one, two, three and four, as specified in G.S. 113A-53(a), above, shall expire June 30, 1975; thereafter the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified in G.S. 113A-53(a), above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9 of the North Carolina Constitution. The Governor shall designate a member of the Commission to serve as chairman."

Section 113A-53 was repealed by Session Laws 1973, c. 1262, s. 41, ratified April 13, 1974, and effective July 1, 1974, and its provisions were incorporated in c. 1262, s. 40, codified above as § 143B-299. Session Laws 1973, c. 1417, ratified April 13, 1974, and effective on ratification, amended subdivision (a)(1) and subsection (b) of repealed § 113A-53 to read as set out in this note. In an opinion of the Attorney General to Mr. James E. Harrington, Secretary of Natural and Economic Resources, July 10, 1974, it was concluded that Session Laws 1973, c. 1417, s. 2, had the effect of amending Session Laws 1973, c. 1262, s. 40, so as to permanently remove the Secretary of Natural and Economic Resources

from his position as chairman of the Sedimentation Control Commission.

Editor's Note. — The 1977 amendment, in subsection (a), substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (1).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 9. Wastewater Treatment Plant Operators Certification Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-300. Wastewater Treatment Plant Operators Certification Commission — creation; powers and duties. — There is hereby created the Wastewater Treatment Plant Operators Certification Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations with respect to the certification of wastewater treatment plant operators as provided by Article 3 of Chapter 90A of the General Statutes of North Carolina.

The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of wastewater treatment plant operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid. (1973, c. 1262, s. 42; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-301. Wastewater Treatment Plant Operators Certification Commission — members; selection; removal; compensation; quorum; services. — The Wastewater Treatment Plant Operators Certification Commission of the Department of Natural Resources and Community Development shall consist of seven members appointed by the Secretary of Natural Resources and Community Development with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;
(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;
(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;
(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;
(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment; and

(6) One member who is employed by the Department of Natural Resources and Community Development and works in the field of water pollution control, who shall serve as chairman of the Certification Commission.

The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify.

The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of Natural Resources and Community Development.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 43; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in the introductory paragraph, in subdivision (6), and in the third paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 10. Earth Resources Council.

§ 143B-302. Earth Resources Council — creation; powers and duties. — There is hereby created the Earth Resources Council of the Department of Natural Resources and Community Development. The Earth Resources Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with regard to improving the general welfare of the citizens of the State through the wise use and conservation of its soil, water, mineral and land resources; and

(2) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. (1973, c. 1262, s. 45; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-303. Earth Resources Council — members; chairman; selection; removal; compensation; quorum; services. — The Earth Resources Council of the Department of Natural Resources and Community Development shall consist of 10 members appointed by the Governor. The composition of the Council shall be as follows: one representative of commercial oil interests, one

official of a regional council of government, one land-use planner, one land surveyor, one representative of the mining industry, one geologist, one representative of the construction industry, one engineer, and two representatives of nongovernmental conservation interests.

The Governor shall designate one member of the Council as chairman to serve in such capacity at the pleasure of the Governor.

Of the initial members of the Council, six shall be appointed by the Governor for terms of two years and four shall be appointed for terms of four years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 46; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last paragraphs.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-304. Earth Resources Council — meetings. — The Earth Resources Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 47.)

Editor's Note. — This section originally referred to the Earth Resources Advisory Council. The name of the Council as created by Session Laws 1973, c. 1262, s. 45, is the Earth Resources Council. Therefore the word "Advisory" has been deleted.

Part 11. Community Development Council.

§ 143B-305. Community Development Council — creation; powers and duties. — There is hereby created the Community Development Council of the Department of Natural Resources and Community Development. The Community Development Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to promoting and assisting in the orderly development of North Carolina counties and communities.

(2) To advise the Secretary of Natural Resources and Community Development with respect to the type and effectiveness of planning and management services provided to local government.

(3), (4) Repealed by Session Laws 1977, c. 198, s. 13.

(5) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 48; 1977, c. 198, ss. 13, 14; c. 771, ss. 4, 8.)

Editor's Note. — The first 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in two places in the introductory paragraph and deleted subdivisions (3) and (4), which required the Council to advise the Secretary of Natural and Economic Resources with respect to the development of scientific and technological industry and with respect to the orderly development of the travel industry within the State.

The second 1977 amendment rewrote subdivision (1) and substituted "Community Development Council" for "Community and Economic Development Council" and "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 10, provides: "The terms of the current members of the Community Development Council, renamed by virtue of Chapter 198 of the 1977 Session Laws, the successor to the Community and Economic Development Council are terminated upon the effective date of this act." The act was ratified June 28, 1977, and made effective on ratification.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-306. Community Development Council — members; chairman; selection; removal; compensation; quorum; services. — The Community Development Council of the Department of Natural Resources and Community Development shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: one member who shall be a local government official, one member who shall be the Executive Secretary of the League of Municipalities, one member who shall be the Executive Secretary of the County Commissioners Association, one member who shall represent industry, one member who shall represent labor, and six members at large.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council other than those members serving in an ex officio capacity shall be appointed to serve for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 49; 1977, c. 198, s. 14; c. 771, ss. 4, 9.)

Editor's Note. — The first 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" near the beginning of the first paragraph.

The second 1977 amendment rewrote the second sentence of the first paragraph, and substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph, and "Community Development Council" for "Community and Economic Development Council" in the first sentence of the first paragraph.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-307. Community Development Council — meetings. — The Community Development Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 50; 1977, c. 198, s. 14.)

Editor's Note. — The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 12. Forestry Council.

§ 143B-308. Forestry Council — creation; powers and duties. — There is hereby created the Forestry Council of the Department of Natural Resources and Community Development. The Forestry Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to all matters concerning the conservation and development of both state-owned and privately-owned forests in the State, including, the promotion of a more profitable use of forest lands;

(2) To undertake such studies and make such reports to the Secretary of Natural Resources and Community Development as the Secretary may direct; and

(3) To advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 52; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-309. Forestry Council — members; chairman; selection; removal; compensation; quorum; services. — The Forestry Advisory Council of the Department of Natural Resources and Community Development shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: Three members shall represent wood-using industries; two members shall represent farmers or other private, nonindustrial forest landowners; two members shall represent forestry interests not primarily concerned with the production of commercial timber, those interests to include but not be limited to watershed protection and environmental protection; one member who shall represent forestry organizations; one member who shall represent banking and financial interests; and two members who shall represent the general public.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council shall be appointed as follows: five members for two-year terms and six members for four-year terms. At the end of the respective terms of office of the initial members of the Council, the appointments of all members shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 53; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-310. Forestry Council — meetings. — The Forestry Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 54.)

Part 13. Parks and Recreation Council.

§ 143B-311. Parks and Recreation Council — creation; powers and duties. — There is hereby created the Parks and Recreation Council for the Department of Natural Resources and Community Development. The Parks and Recreation Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to the promotion, development and administration of the State's recreation and park system;

(2) To advise the Secretary of Natural Resources and Community Development with respect to the quality and quantity of the total recreation services provided to the citizens of the State and out-of-state visitors by governmental units, private agencies and commercial organizations;

(3) To advise the Secretary of Natural Resources and Community Development with respect to the development and maintenance of a feasible and effective action program to assure an adequate environment for satisfying recreation experiences;

(4) To educate and inform the citizens of the State with respect to both the needs and the opportunities of the recreation and park system; and

(5) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 55; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services. — The Parks and Recreation Council shall be composed of 13 members appointed by the Governor. Four of the members must reside in the western part of the State, four must reside in the Piedmont, and four must reside in the eastern part of the State. The composition of the Council shall be as follows: one person who is an active professor in the area of parks and recreation; one person who is an active professor of biology; one local government official who is involved in recreation planning and is aware of the recreational needs of communities; one person who represents private recreational interests; one person who is the chairman of the Zoological Park Council; one person who is the chairman of one of the local federal reservoir advisory committees; and six persons who are citizens of the State and have both knowledge and interest in parks and recreation

management. The president of the North Carolina Recreation and Parks Society, Incorporated shall serve as ex officio member of the Council.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

The members of the Council shall be appointed to terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 56; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-313. Parks and Recreation Council — meetings. — The Parks and Recreation Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 57.)

Part 14. North Carolina Water Safety Council.

§ 143B-314. North Carolina Water Safety Council — creation; powers and duties. — There is hereby created the North Carolina Water Safety Council of the Department of Natural Resources and Community Development. The North Carolina Water Safety Council shall have the following functions and duties:

(1) To advise the Wildlife Resources Commission with respect to the activities of the various public and private agencies, organizations, corporations, and individuals with responsibilities or interests relevant to the maintenance of an effective program of water safety in North Carolina; and

(2) The Council shall consider and advise the Wildlife Resources Commission upon any matter that the Commission may refer to it. (1973, c. 1262, s. 58; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-315. North Carolina Water Safety Council — members; officers; selection; removal; compensation; quorum; services. — The North Carolina Water Safety Council shall consist of 15 members appointed by the Governor. They must represent the various viewpoints and interests respecting water safety that exist within the State.

The Governor shall designate one member of the Council to serve as chairman at his pleasure. The Council shall annually elect one member as vice-chairman to serve in the absence of the chairman.

In order to achieve staggered terms, the Governor shall initially appoint eight

members for terms of two years and seven members for terms of four years. After the initial appointments, subsequent appointments of all members of the Council shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 59; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-316. North Carolina Water Safety Council — meetings. — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least 10 members. (1973, c. 1262, s. 60.)

Part 15. Air Quality Council.

§ 143B-317. Air Quality Council — creation; powers and duties. — There is hereby created the Air Quality Council of the Department of Natural Resources and Community Development. The Air Quality Council shall have the following functions and duties:

(1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for air; and

(2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 61; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-318. Air Quality Council — members; chairman; selection; removal; compensation; quorum; services. — The Air Quality Council of the Department of Natural Resources and Community Development shall consist of nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of air pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of air pollution; and one practicing biologist knowledgeable in the principles of air quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

In order to achieve staggered terms, the Governor shall initially appoint three

members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 62; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-319. Air Quality Council — meetings. — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 63.)

Part 16. Water Quality Council.

§ 143B-320. Water Quality Council — creation; powers and duties. — There is hereby created the Water Quality Council of the Department of Natural Resources and Community Development. The Water Quality Council shall have the following functions and duties:

(1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for water; and

(2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 64; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-321. Water Quality Council — members; chairman; selection; removal; compensation; quorum; services. — The Water Quality Council of the Department of Natural Resources and Community Development shall consist of nine members appointed by the Governor. The composition of council shall be as follows: one registered professional engineer knowledgeable in matters of water pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of water pollution, and one practicing biologist knowledgeable in the principles of water quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

In order to achieve staggered terms, the Governor shall initially appoint three members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 65; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 17. North Carolina National Park, Parkway and Forests Development Council.

§§ 143B-322 to 143B-324: Recodified as §§ 143B-446 to 143B-447.1 by Session Laws 1977, c. 198, s. 26.

Part 18. Commercial and Sports Fisheries Advisory Committee.

§ 143B-325. Commercial and Sports Fisheries Advisory Committee — creation, powers and duties. — There is hereby created the Commercial and Sports Fisheries Advisory Committee of the Department of Natural Resources and Community Development. The Commercial and Sports Fisheries Advisory Committee shall have the following functions and duties:

(1) To study all matters and activities in connection with the conservation of marine and estuarine resources and make recommendations to the Secretary of Natural Resources and Community Development;

(2) To act as a liaison group between sports and commercial fishermen, and others interested in the beneficial utilization of the marine and estuarine resources, and the Secretary of Natural Resources and Community Development;

(3) The Advisory Committee shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it; and

(4) The Advisory Committee may originate its own studies on various matters within the scope of its interests and report on such matters to the public or to the agency or official appropriately concerned. (1973, c. 1262, s. 69; 1977, c. 512, s. 4; c. 771, s. 4.)

Editor's Note. — Session Laws 1977, c. 512, s. 4, purported to repeal former Part 18, Commercial and Sports Fisheries Committee, of this Article containing §§ 143B-325 through 143B-327, and enact a new Part 18A, Commercial and Sports Fisheries Advisory Committee, containing §§ 143B-325.1 through 143B-325.3. Except for the insertion of the word "Advisory"

in the title of the Committee, and the deletion of one phrase in § 143B-326, the new Part 18A was virtually identical to the repealed Part 18, and it has therefore been treated as amending Part 18, §§ 143B-325 through 143B-327.

The first 1977 amendment, effective July 1, 1977, inserted "Advisory" preceding "Committee" throughout the section.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-326. Commercial and Sports Fisheries Advisory Committee — members; chairman; selection; removal; compensation; quorum; services. — The Commercial and Sports Fisheries Advisory Committee shall consist of nine members appointed by the Governor. The composition of the Advisory Committee shall be as follows: three members who are sports fishermen, three members who are commercial fishermen, and three members who are professional scientists with backgrounds relevant to the conservation of marine and estuarine resources.

The Governor shall designate one member of the Advisory Committee to serve as chairman at his pleasure.

The initial members of the Advisory Committee shall be appointed as follows: four members for two years and five members for four years. At the end of the respective terms of office of the initial members of the Advisory Committee, appointments shall be made for four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Advisory Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Advisory Committee from office.

Members of the Advisory Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Advisory Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Advisory Committee shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 70; 1977, c. 512, s. 4; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, inserted "Advisory" preceding "Committee" throughout the section. The amendment also deleted "in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973" from the fourth paragraph.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-327. Commercial and Sports Fisheries Advisory Committee — meetings. — The Commercial and Sports Fisheries Advisory Committee shall meet at least semiannually and may hold special meetings at any time or place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 71; 1977, c. 512, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "Advisory" preceding "Committee."

Part 19. John H. Kerr Reservoir Committee.

§ 143B-328. John H. Kerr Reservoir Committee — creation; powers and duties. — There is hereby created the John H. Kerr Reservoir Committee for the Department of Natural Resources and Community Development. The John H. Kerr Reservoir Committee shall have the following functions and duties:

(1) To study the development of the John H. Kerr area and recommend to the Secretary of Natural Resources and Community Development policies and programs that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation;

(2) To recommend to the Secretary of Natural Resources and Community Development reasonable rules and regulations for the use by the public of all real and personal property under jurisdiction of the John H. Kerr Reservoir;

(3) To consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it; and

(4) To stimulate, inform and educate the citizens of the State about the needs as well as the opportunities of the John H. Kerr Reservoir. (1973, c. 1262, s. 73; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-329. John H. Kerr Reservoir Committee — members; chairman; selection; removal; compensation; quorum; services. — The John H. Kerr Reservoir Committee shall be composed of nine members appointed by the Governor. Six of these shall be residents of three counties that are contiguous to the John H. Kerr Reservoir: two from Vance County; two from Granville County; and two from Warren County. The remaining three members may be appointed at large.

The Governor shall designate one member of the Committee to serve as chairman at his pleasure.

The initial members of the Committee shall be the appointed members of the John H. Kerr Reservoir Development Commission who shall serve for a period equal to the remainder of their current terms on the John H. Kerr Reservoir Development Commission, five of whose terms expire July 26, 1973, three of whose terms expire July 26, 1975, and one of whose term expires July 26, 1977. At the end of the respective terms of office of the initial members of the Committee, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 74; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-330. John H. Kerr Reservoir Committee — meetings. — The John H. Kerr Reservoir Committee shall meet at least semiannually and may hold special meetings at any time, any place, within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 75.)

Part 20. Science and Technology Committee.

§§ 143B-331, 143B-332: Recodified as §§ 143B-440, 143B-441 by Session Laws 1977, c. 198, s. 26.

Part 21. North Carolina Trails Committee.

§ 143B-333. North Carolina Trails Committee — creation; powers and duties. — There is hereby created the North Carolina Trails Committee of the Department of Natural Resources and Community Development. The Committee shall have the following functions and duties:

(1) To meet not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of G.S. 113A-88.

(2) To coordinate trail development among local governments, and to assist local governments in the formation of their trail plans and advise the Department of its findings.

(3) To advise the Secretary of trail needs and potentials pursuant to G.S. 113A-88. (1973, c. 1262, s. 80; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-334. North Carolina Trails Committee — members; selection; removal; compensation. — The North Carolina Trails Committee shall consist of seven members appointed by the Secretary of Natural Resources and Community Development. Two members shall be from the mountain section, two from the Piedmont section, two from the coastal plain, and one at large. They shall as much as possible represent various trail users.

The initial members of the North Carolina Trails Committee shall be the members of the current North Carolina Trails Committee who shall serve for a period equal to the remainder of their current term on the North Carolina Trails Committee. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for staggered terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Secretary of Natural Resources and Community Development shall designate a member of the Committee to serve as chairman at the pleasure of the Governor.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973. (1973, c. 1262, s. 81; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the fourth paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 22. North Carolina Zoological Park Council.

§ 143B-335. North Carolina Zoological Park Council — creation; powers and duties. — There is hereby created the North Carolina Zoological Park Council of the Department of Natural Resources and Community Development. The North Carolina Zoological Park Council shall have the following functions and duties:

(1) To advise the Secretary on the basic concepts of and for the Zoological Park, approve conceptual plans for the Zoological Park and its buildings;
(2) To advise on the construction, furnishings, equipment and operations of the North Carolina Zoological Park;
(3) To recommend programs to promote public appreciation of the North Carolina Zoological Park;
(4) To disseminate information on animals and the park as deemed necessary;
(5) To develop effective public support of the North Carolina Zoological Park through whatever means are desirable and necessary;
(6) To solicit financial and material support from various private sources within and without the State of North Carolina; and
(7) To advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 83; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language and in subdivision (7).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services. — The North Carolina Zoological Park Council of the Department of Natural Resources and Community Development shall consist of 15 members appointed by the Governor.

The initial members of the Council shall be the members of the Board of Directors of the North Carolina Zoo Authority who shall serve for a period equal to the remainder of their current terms on the Board of Directors of the North Carolina Zoological Authority, all of whose terms expire July 15, 1975. At the end of the respective terms of office of the initial members of the Council, the Governor, to achieve staggered terms, shall appoint five members for terms of two years, five members for terms of four years and five members for terms of six years. Thereafter, the appointment of their successors shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 84; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last paragraphs.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 23. Governor's Law and Order Commission.

§ 143B-337. Governor's Law and Order Commission — creation; composition; terms; meetings, etc. — (a) There is hereby created the Governor's Law and Order Commission of the Department of Natural Resources and Community Development. The Commission shall consist of 28 members, including the Governor. The composition of the Commission shall be as follows:

(1) Eight ex officio members of State government including the Governor, the Attorney General, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, the Secretary of Administration, the Director of the Administrative Office of the Courts, the Secretary of Correction, and the Chairman of the Paroles Commission.

(2) Twenty members appointed by the Governor consisting of two sheriffs, two police executives, one judge of the superior court, one judge of the district court, one district attorney, two citizens (one with knowledge of juvenile delinquency), one attorney specializing in defense of criminal cases, five county commissioners appointed after consultation with the North Carolina Association of County Commissioners, five mayors or other elected municipal officials appointed after consultation with the North Carolina League of Municipalities.

(b) The initial members of the Commission shall be the previously appointed members of the Committee on Law and Order who shall serve for a period equal to the remainder of their current terms on the Law and Order Committee, all of which terms expire on June 30, 1975. The Governor shall thereafter appoint members, other than those serving ex officio designated in subsection (a)(1), to serve three-year staggered terms. Seven shall be appointed for one-year terms, seven for two-year terms, and six for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. Successors, whether for a full term or to fill a vacancy, to the county and municipal officials initially appointed shall be appointed after consultation in the same manner as the initial members. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member, or created by disqualification by virtue of a member no longer serving in the office from which he qualified for appointment, shall be for the balance of the unexpired term. The Governor may annually designate a member of the Commission to serve as its chairman, and one to serve as its vice-chairman.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

The Committee [Commission] shall meet quarterly and at other times at the call of the chairman or upon written request of at least 11 of the members.

A majority of the Commission shall constitute a quorum for the transaction of business. (1975, c. 663; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-338. Governor's Law and Order Commission — powers and duties. — (a) The Law and Order Commission shall have the following powers and duties:

(1) To assist and participate with State and local law-enforcement agencies to improve law enforcement and the administration of criminal justice;
(2) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;
(3) To encourage public support and respect for law and order;
(4) To seek ways to continue to make North Carolina a safe and secure State for its citizens;
(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work; and
(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary.

(b) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for law and order purposes which may be made available for the State by the federal government. The Law and Order Commission shall be the State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law-Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government.

All decisions and grants heretofore made by the Committee on Law and Order shall remain in full force and effect unless and until repealed or superseded by action of the Law and Order Commission established herein. All actions adopted by the Commission shall be enforced by the Administrator, Law and Order Section, of the Department of Natural Resources and Community Development. (1975, c. 663; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-339. Law and Order Section of Department of Natural Resources and Community Development. — (a) There is hereby established, within the Department of Natural Resources and Community Development, the Law and Order Section, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Department of Natural Resources and Community Development shall provide clerical and other services required by the Law and Order Commission,

and shall administer the State Law-Enforcement Assistance Program and such additional related programs as may be established by or assigned to the Commission. Administrative responsibilities shall include, but are not limited to, the following:

(1) Compile data, establish needs and set priorities for funding as policy recommendations for the Commission;

(2) Prepare statewide plans for adoption by the Commission which are designated [designed] to improve systematically the administration of criminal justice and the reduction of crime in North Carolina and revise them from time to time as may be appropriate;

(3) Advise State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;

(4) Stimulate and seek financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;

(5) Assist State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning, and crime reduction;

(6) Encourage and assist in the coordination of programs and activities of the several interests in the criminal justice system at the federal, State and local government levels in the preparation and implementation of adopted criminal justice administration improvements and crime reduction plans;

(7) Apply for, receive, disburse and audit the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;

(8) Enter into, monitor and evaluate the results of contracts and agreements necessary or incidental to the discharge of responsibilities assigned;

(9) Take such other actions as may be necessary and appropriate to carry out assigned duties and responsibilities. (1975, c. 663; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (a) and the introductory paragraph of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 24. North Carolina Employment and Training Council.

§ 143B-340. North Carolina Employment and Training Council — creation; duties and responsibilities. — There is hereby created a North Carolina Employment and Training Council, within the Department of Natural Resources and Community Development hereinafter referred to as "the Council."

The Council shall have the following duties and responsibilities:

(1) To advise the Governor on goals, objectives and policies regarding employment, training, and related programs, including community employment;

(2) To review the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State;

(3) To make recommendations to the affected agencies, and to the Governor regarding the effective planning, delivery and coordination of employment, training and related services within the State; and
(4) To conduct studies, prepare reports and provide such advisory services as may be authorized or directed by the Governor or the Secretary of Natural Resources and Community Development. (1977, c. 771, s. 6.)

§ 143B-341. North Carolina Employment and Training Council — structure; staff support; related councils. — The North Carolina Employment and Training Council shall consist of 21 members, to be selected by the Governor in a manner consistent with related federal law and regulations and who shall serve at the pleasure of the Governor. The Governor, who shall not be a voting member, shall serve as the chairman. The Governor may appoint a vice-chairman who shall preside over meetings in his absence.

The Council shall meet at least three times annually at the call of the chairman or the Secretary of Natural Resources and Community Development. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, G.S. 138-6, or G.S. 120-3.1, as the case may be.

The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally supported employment and training-related programs.

Clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development.

The Secretary of Natural Resources and Community Development or his designee shall serve as Secretary of the Council. (1977, c. 771, s. 6.)

§§ 143B-342 to 143B-344: Reserved for future codification purposes.

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-345. Department of Transportation — creation. — There is hereby created and established a department to be known as the "Department of Transportation" with the organization, powers, and duties defined in Article 1 of Chapter 143B, except as modified in this Article. (1975, c. 716, s. 1.)

Editor's Note. — Session Laws, 1975, c. 716, s. 8, makes the act effective July 1, 1975.

§ 143B-346. Department of Transportation — purpose and functions. — The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law. The Department shall also provide and maintain an accurate register of transportation vehicles as provided by statutes, and the Department shall enforce the laws of this State relating to transportation safety assigned to the Department. The Department of Transportation shall be responsible for all of the transportation functions of the executive branch of the State as provided by law except those functions delegated to the Utilities Commission, the State Ports Authority, and the Commissioners of Navigation and Pilotage as provided for by Chapter 76. The major transportation functions include aeronautics, highways, mass

transportation, motor vehicles, and transportation safety as provided for by State law. The Department of Transportation shall succeed to all functions vested in the Board of Transportation and the Department of Motor Vehicles on July 1, 1977. (1975, c. 716, s. 1; 1977, c. 464, s. 2.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

§ 143B-347: Repealed by Session Laws 1977, c. 464, s. 3, effective July 1, 1977.

Cross Reference. — For present provisions as to the functions of the Department of Transportation, see § 143B-346.

§ 143B-348. Department of Transportation — head; rules, regulations, etc., of Board of Transportation. — The Secretary of Transportation shall be the head of the Department of Transportation. He shall carry out the day-to-day operations of the Department and shall be responsible for carrying out the policies, programs, priorities, and projects approved by the Board of Transportation. He shall be responsible for all other transportation matters assigned to the Department of Transportation, except those reserved to the Board of Transportation by statute. Except as otherwise provided for by statute, the Secretary shall have all the powers and duties as provided for in Article 1 of Chapter 143B including the responsibility for all management functions for the Department of Transportation. The Secretary shall be vested with authority to adopt design criteria, construction specifications, and standards as required for the Department of Transportation to construct and maintain highways, bridges, and ferries.

All rules, regulations, ordinances, specifications, standards, and criteria adopted by the Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by the Board of Transportation or the Secretary of Transportation. The Secretary shall have complete authority to modify any of these matters existing on July 1, 1977, except as specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance, specification, or standards are continued in effect under this section and the words "Board of Transportation" are used, the words shall mean the "Department of Transportation" unless the context makes such meaning inapplicable. All actions pending in court by or against the Board of Transportation may continue to be prosecuted in that name without the necessity of formally amending the name to the Department of Transportation. (1975, c. 716, s. 1; 1977, c. 464, s. 4.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, added "of Transportation" at the end of the first sentence and added the remainder of the section.

§ 143B-349: Repealed by Session Laws 1977, c. 464, s. 5, effective July 1, 1977.

Part 2. Board of Transportation — Secondary Roads Council.

§ 143B-350. Board of Transportation — organization; powers and duties, etc. — (a) There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any

particular area. The Board may, from time to time, provide that one or more of its members or representatives shall hear any person or persons concerning transportation.

(b) The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation.

(c) The Board of Transportation shall have 21 members appointed by the Governor. One member shall be appointed from each of the 14 highway engineering divisions and seven members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.

(d) The Board of Transportation shall have two members appointed from the membership of the General Assembly, in addition to those members appointed by the Governor. One member shall be appointed from the membership of the Senate by the Lieutenant Governor and one member shall be appointed from the membership of the House of Representatives by the Speaker of the House of Representatives. The legislative members shall be appointed for initial terms beginning July 1, 1977, and shall serve for a term ending January 14, 1979, or until a successor is duly appointed and qualified. The succeeding term of each shall be for two years beginning January 15, 1979, and each two years thereafter. Vacancies in each office shall be filled by the incumbent of the office making the appointment to the Board.

(e) The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. The members of the Board who are not members of the General Assembly shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and 138-6, as appropriate. The members of the Board who are members of the General Assembly shall not receive per diem but shall receive travel and subsistence expenses at the rates set out in G.S. 120-3.1.

(f) The Board of Transportation shall have duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives;

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future which shall be published in a single document along with a report of the progress accomplished in the past year;

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it;
(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;
(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;
(8) To approve all highway construction programs;
(9) To approve all highway construction projects and construction plans for the construction of projects;
(10) To review all statewide maintenance functions;
(11) To award all highway construction contracts;
(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;
(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(g) The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:
(1) To approve all highway construction projects and construction plans for the construction of projects;
(2) To award all highway construction contracts;
(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers. (1975, c. 716, s. 1; 1977, c. 464, s. 6.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote this section.

§§ 143B-351, 143B-352: Repealed by Session Laws 1977, c. 464, s. 7, effective July 1, 1977.

Part 3. North Carolina State Ports Authority Transfer.

§ 143B-353: Repealed by Session Laws 1977, c. 65, s. 3.

Part 4. Navigation and Pilotage Commissions.

§ 143B-354: Recodified as § 143B-451 by Session Laws 1977, c. 198, s. 26.

Part 5. Division of Aeronautics — Aeronautics Council.

§ 143B-355. Division of Aeronautics. — There is hereby created the Division of Aeronautics of the Department of Transportation. The Division of Aeronautics shall carry out the duties assigned to the Department of Transportation by Article 1B of Chapter 113 of the General Statutes. (1975, c. 716, s. 1.)

§ 143B-356. Aeronautics Council — creation; powers and duties. — There is hereby created the Aeronautics Council of the Department of Transportation. The Aeronautics Council shall advise the Secretary of the Department in the issuance of loans and grants to the cities, counties, and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county, or public authority airport facilities and upon any matter relating to airports which the Secretary may refer to it. The Secretary shall report the activities of the Council to the Governor. (1975, c. 716, s. 1.)

§ 143B-357. Aeronautics Council — members; selection; quorum; compensation. — The Aeronautics Council of the Department of Transportation shall consist of 11 members appointed by the Governor, who, in making such appointments, shall designate one person from each of the congressional districts of the State. At least four of the appointed members shall possess a broad knowledge of aviation and airport development.

Five of the initial members of the Council shall be the five members of the Governor's Aviation Committee whose terms expire on June 30, 1977, who shall serve on the Council until June 30, 1977. Thereafter, their successors shall be appointed for a term of office of four years. Six members of the Council shall be appointed for a term of four years beginning July 1, 1975. Thereafter, after the expiration of their respective terms of office, the successors shall be appointed for terms of four years. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Transportation. (1975, c. 716, s. 1.)

Part 6. North Carolina Railroad and Atlantic Railroad.

§ 143B-358. North Carolina Railroad and Atlantic and North Carolina Railroad. — The Department of Transportation shall make a study of the status of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, and the State's interest in them including ownership of stock of the railroads by the State. The Department of Transportation shall report to the transportation committees of the House and Senate of the next General Assembly. The report shall include the State's investment in the railroads, the State's interest in the railroads, a history of the financial transactions between the State and the railroads involving loans or credit of the State, and how the State's interest as a shareholder is exercised. The report shall include recommendations for continued State ownership of the stock in the railroads, continuance of the present lease arrangements of the railroads and alternatives at the expiration of the leases, and it shall include recommendations for a method of exercising the State's interest as a shareholder in the railroads and monitoring the activities of the said railroads. (1975, c. 716, s. 1.)

Part 7. North Carolina Traffic Safety Authority.

§ 143B-359. North Carolina Traffic Safety Authority. — The North Carolina Traffic Safety Authority as provided for by Article 44 of Chapter 143 is hereby transferred to the Department of Transportation. The Authority shall exercise the duties as provided in the statute without supervision or control of the Secretary of Transportation except as provided in the Article. The Authority shall report to the Governor through the Secretary of Transportation. (1975, c. 716, s. 1.)

Part 8. Highway Safety Program.

§ 143B-360. Powers and duties of Department and Secretary. — The Department of Transportation is hereby empowered to contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, the Secretary of Transportation shall coordinate, with the Governor's approval, the activities of any and all departments and agencies of the State and its subdivisions relating thereto. (1975, c. 716, s. 1.)

§§ 143B-361 to 143B-365: Reserved for future codification purposes.

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-366. Department of Administration — creation. — There is hereby recreated and reestablished a department to be known as the "Department of Administration," with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1975, c. 879, s. 2.)

Cross Reference. — For other provisions as to the Department of Administration, see § 143-334 et seq.

§ 143B-367. Duties of the Department. — It shall be the duty of the Department of Administration to serve as a staff agency to the Governor and to provide for such ancillary services as the other departments of State government might need to insure efficient and effective operations. (1975, c. 879, s. 3.)

Cross References. — As to powers and duties of the Department of Administration, see § 143-341. As to establishment of land records management program in the Department of Administration, see § 143-145.6.

§ 143B-368. Functions of the Department. — (a) The functions of the Department of Administration shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all functions of the executive branch of the State in relation to interdepartmental administration previously delineated and further including those prescribed powers, duties, functions, and responsibilities enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina.

(b) All such functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina, are hereby transferred to and vested in the Department of

Administration except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not limitation, the functions of

(1) The Director of the Department of Administration,
(2) The Systems Management Division,
(3) The North Carolina Capital Planning Commission,
(4) The State Youth Council and the Youth Advisory Board,
(5) The North Carolina Human Relations Commission,
(6) The North Carolina Commission on Interstate Cooperation,
(7) The State Construction Finance Authority,
(8) The Marine Science Council,
(9) The Southern Interstate Nuclear Compact, and
(10) The Council on the Status of Women.

Also the functions shall comprise those specified for the Day-Care Licensing Board in Article 7 of Chapter 110 of the General Statutes, and the North Carolina Manpower Council in Article 29D of Chapter 143 of the General Statutes. (1975, c. 879, s. 4.)

Cross Reference. — As to powers and duties of the Department of Administration, see also § 143-341.

§ 143B-369. Head of the Department. — The Secretary of Administration shall be the head of the Department. (1975, c. 879, s. 5.)

Cross Reference. — As to the powers and duties of the Secretary of Administration, see § 143-340.

§ 143B-370. Organization of the Department. — The Department of Administration shall be organized initially to include the State Goals and Policy Board, the State Personnel Board, the North Carolina Capital Planning Commission, the Child Day-Care Licensing Commission, the North Carolina Drug Commission, the North Carolina Council on Interstate Cooperation, the State Youth Advisory Council, the North Carolina Marine Science Council, the North Carolina Human Relations Council, the Council on the Status of Women, the North Carolina Manpower Council, the Standardization Committee, the Southern Interstate Nuclear Compact, the Division of State Budget and Management, the Division of State Planning, the Division of State Property and Construction, the Division of State Purchase and Contract, the Division of State Personnel, the Division of State Management Systems, the Division of State General Services, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1975, c. 879, s. 6.)

Part 2. State Goals and Policy Board.

§ 143B-371. State Goals and Policy Board — creation; powers and duties. — There is hereby created the State Goals and Policy Board of the Department of Administration. The State Goals and Policy Board shall have the following functions and duties:

(1) To express the needs and aspirations of North Carolina's citizens and identify the kind of future they want for themselves in the form of goals proposed for State action along with a suggested timetable within which these goals might reasonably be achieved;

(2) To study the resources and means of action available to State government and recommend policies to guide the State in using these resources and means to achieve State goals and suggest short-run goals, consistent with the long-run goals, that should receive priority consideration within a three- to five-year frame;

(3) To evaluate the present structure and activities of State government and recommend improvements in management and communication so that the State may pursue its chosen goals in an efficient and well-coordinated manner;

(4) To identify areas of public interest where needs are urgent or present policies inadequate and recommend appropriate study and analysis to provide a basis for evaluating alternative courses of action;

(4a) Establish priorities in order to pursue a comprehensive plan to avert the exorbitant social and economic costs of diseases, deformities, and other human miseries. These costs can be drastically reduced by the adoption of a policy of prevention designed to ease the emotional and financial burdens resulting from fragmented and piecemeal efforts to deal with problems after they arise, as well as to ensure a higher quality of life for the citizens of this State.

(5) To inform the general public of the main problems facing the State and involve the citizenry in the study and debate of State goals and policy; and

(6) To submit a report to the Governor by November 30 of each year to guide him in preparing his "state of the State" message.

Members of the Board, who are not officers, or employees of the State, shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Administration. (1975, c. 879, s. 7; 1977, c. 923, s. 1.)

Editor's Note. — The 1977 amendment added subdivision (4a).

§ 143B-372. State Goals and Policy Board — members; selection; quorum; compensation. — The State Goals and Policy Board of the Department of Administration shall consist of 16 members, 15 of whom shall be appointed by the Governor and the Governor who shall himself serve as an ex officio member. The composition of the Board shall be citizens whose background, training, and experience qualify them to survey the whole range of State needs, to propose State goals, and to recommend ways for State government to achieve these goals.

The initial members of the State Goals and Policy Board shall be the members of the Council on State Goals and Policy who shall serve for a period equal to the remainder of their current terms on the Council on State Goals and Policy, five of whose appointments expire March 13, 1977, and five of whose appointments expire March 13, 1978, and five of whose appointments expire March 13, 1979. At the end of the respective terms of office of the initial members of the Board, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Governor shall serve as chairman of the Board and designate a member to serve in such capacity in his absence. The Board shall meet quarterly and at other times at the call of the chairman. (1975, c. 879, s. 8.)

Part 3. North Carolina Capital Planning Commission.

§ 143B-373. North Carolina Capital Planning Commission — creation; powers and duties. — There is hereby recreated the North Carolina Capital Planning Commission of the Department of Administration.

(1) The Commission shall have the following powers and duties:
   a. To obtain and maintain up-to-date building requirements for State governmental agencies in the City of Raleigh and its environs;
   b. To formulate a long-range capital improvement program as required for State central governmental agencies in the City of Raleigh and its environs and maintain this program up-to-date;
   c. To recommend the acquisition of land as required;
   d. To select the locations for State government buildings, monuments, memorials and improvements in the City of Raleigh and its environs; and
   e. To name any new State government building or any building hereafter acquired by the State of North Carolina in the City of Raleigh and its environs, with the exception of buildings comprising a part of the North Carolina State University, the Dorothea Dix Hospital, or the Governor Morehead School;

(2) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for capital improvement purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the existing North Carolina Capital Planning Commission shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration. (1975, c. 879, s. 10.)

§ 143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation. — The North Carolina Capital Planning Commission of the Department of Administration shall consist of the following ex officio members: the Governor of North Carolina who shall serve as chairman; all members of the Council of State including the Lieutenant Governor, who shall serve as vice-chairman; the Speaker, and four members of the North Carolina House of Representatives, and four members of the North Carolina Senate; and a representative of the City of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at the same date city council members' terms expire. The Lieutenant Governor shall appoint the four members of the Senate on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire. The Speaker of the House of Representatives shall appoint the four members of the House on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire.

Public officers who are made members of the Commission shall be deemed to serve ex officio.

and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration.

All minutes, records, plans, and all other documents of public record of the State Capital Planning Commission, the Heritage Square Commission, and the former North Carolina Capital Planning Commission shall be turned over to the Department of Administration.

The Commission shall meet quarterly, and at other times at the call of the chairman. (1975, c. 879, s. 11.)

Part 4. Child Day-Care Licensing Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-375. Child Day-Care Licensing Commission — creation; powers and duties. — There is hereby created the Child Day-Care Licensing Commission of the Department of Administration with the power and duty to adopt rules and regulations to be followed in the licensing and operation of child day-care facilities and day-care plans as provided by Article 7 of Chapter 110 of the General Statutes of North Carolina.

(1) The Child Day-Care Licensing Commission shall have the power and duty to adopt rules and regulations:
   a. For the issuance of licenses to any day-care facility; and
   b. To register day-care plans and to adopt rules and regulations as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for "AA" license, only, as authorized by G.S. 110-88(7).

(2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Board shall remain in full force and effect unless and until repealed or superseded by action of the Child Day-Care Licensing Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration. (1975, c. 879, s. 13.)

§ 143B-376. Child Day-Care Licensing Commission — members; selection; quorum; compensation. — The Child Day-Care Licensing Commission of the Department of Administration shall consist of 15 members, five of whom shall be State officials and 10 of whom shall be citizen members appointed by the Governor as hereinafter provided. The five State officials who shall serve on the Commission shall be the Governor, the Attorney General, the Commissioner of Insurance, the State Superintendent of Public Instruction and the Secretary of Human Resources. Any State official may designate a representative of his department to sit in his place on the Commission. The 10 citizen members shall be appointed by the Governor with provision that none shall be employees of the State and at least five of said appointees shall be operators of day-care

facilities subject to licensing who are actively engaged in the operation for profit. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, three shall be from facilities licensed for no more than 70 children and one operator shall be from a facility licensed for more than 70 children. Three appointees shall be citizens not employed by day-care facilities who have no direct or indirect pecuniary interest in such, but two of whom shall be parents of preschool children at the time of their appointment. Two appointees shall be operators of nonprofit day-care facilities. The initial members of the Commission shall be the appointed members of the Child Day-Care Licensing Board who shall serve for a period equal to the remainder of their current terms on the Child Day-Care Licensing Board, three of whose appointments expire December 31, 1975, four of whose appointments expire December 31, 1977, and three of whose appointments expire December 31, 1980. The terms of each State official, or his designee shall end on the day his term of office ends, whether by death, resignation, or expiration of such term. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

The Governor shall designate a member of the Commission as chairman to serve in such capacity at the pleasure of the Governor.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration. (1975, c. 879, s. 14.)

Part 5. North Carolina Drug Commission.

§§ 143B-377, 143B-378: Repealed by Session Laws 1977, c. 667, s. 1, effective July 1, 1977.

Part 6. North Carolina Council on Interstate Cooperation.

§ 143B-379. North Carolina Council on Interstate Cooperation — creation; powers and duties. — There is hereby created the North Carolina Council on Interstate Cooperation of the Department of Administration.

The North Carolina Council on Interstate Cooperation shall have the following functions and duties:

(1) To carry forward the participation of this State as a member of the Council of State Governments;

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government, and of local units of government;

(3) To endeavor to advance cooperation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:
a. The adoption of compacts;
b. The enactment of uniform or reciprocal statutes;
c. The adoption of uniform or reciprocal administrative rules and regulations;
d. The informal cooperation of governmental offices with one another;
e. The personal cooperation of governmental officials and employees with one another, individually;
f. The interchange and clearance of research and information; and
g. Any other suitable process.

(4) To study, analyze, and report to the Secretary of Administration its recommendations concerning interstate compacts affecting the interest of North Carolina and studies and reports prepared by the Council of State Governments and similar agencies; regularly to inform the members of the General Assembly and other State officials of the publications and services which the Council of State Governments makes available to them; and to attend appropriate national and regional conferences of State officials considering interstate problems of concern to North Carolina and report thereon to the Secretary;

(5) In short, to do all such acts as will, in the opinion of this Council enable this State to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose;

(6) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(7) The Council shall report to the Governor and to the legislature within 15 days after the convening of each regular legislative session. (1975, c. 879, s. 19.)

Cross Reference. — For statute declaring the Council of State Governments a governmental agency, see § 143-186.

§ 143B-380. North Carolina Council on Interstate Cooperation — members; selection; quorum; compensation. — The North Carolina Council on Interstate Cooperation of the Department of Administration shall consist of 11 members. The composition of the Council shall be as follows:

(1) President of the Senate;
(2) Speaker of the House of Representatives;
(3) Three Senators designated by the President of the Senate;
(4) Three Representatives designated by the Speaker of the House; and
(5) Three administrative officials designated by the Governor.

The initial members of the Council shall be the appointed members of the North Carolina Commission on Interstate Cooperation who shall serve for a period equal to the remainder of the current terms on the North Carolina Commission on Interstate Cooperation, all of whose terms expire June 30, 1977. (1975, c. 879, s. 20.)

§ 143B-381. North Carolina Council on Interstate Cooperation — officers. — The Governor shall biennially designate the chairman of the Council from among the legislative members of the Council. (1975, c. 879, s. 21.)

§ 143B-382. North Carolina Council on Interstate Cooperation — Senate members. — The President of the Senate shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the Senate as members of the Council on Interstate Cooperation. (1975, c. 879, s. 22.)

§ 143B-383. North Carolina Council on Interstate Cooperation — House members. — The Speaker of the House of Representatives shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the House as members of the Council on Interstate Cooperation. (1975, c. 879, s. 23.)

§ 143B-384. North Carolina Council on Interstate Cooperation — terms of members; removal; expenses; quorum; services. — Each of the Senate and House members of the Council shall serve until his successor as a member of the Council is designated. Each administrative member of the Council shall serve for a term of two years and until his successor is designated.

The Governor shall have the power to remove any of his appointees to the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 24.)

Part 7. Youth Councils.

§ 143B-385. State Youth Advisory Council — creation; powers and duties. — There is hereby created the State Youth Advisory Council of the Department of Administration. The State Youth Advisory Council shall have the following functions and duties:

(1) To advise the youth councils of North Carolina;
(2) To encourage State and local councils to take active part in governmental and civic affairs, promote and participate in leadership and citizenship programs, and cooperate with other youth-oriented groups;
(3) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(4) To establish procedures for the election of its youth representatives by the State Youth Council; and
(5) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 26.)

§ 143B-386. State Youth Advisory Council — members; selection; quorum; compensation. — The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council; and 10 adults to be appointed by the Governor.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms

expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of one year and until their successors are appointed and qualify.

(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 27; 1977, c. 510.)

Editor's Note. — The 1977 amendment rewrote the first three paragraphs, increasing the membership of the Council from 16 to 20 members, adding provisions for two additional youth members and two additional adult members and their terms, reducing the terms of the adult members from four years to two years, and adding the third sentence of subdivision (2) in the third paragraph.

§ 143B-387. State Youth Council. — There shall be a State Youth Council. It shall be established within one year of July 1, 1975, in accordance with the methods and procedures established by the Youth Advisory Council. The State Youth Council is authorized and empowered to do the following:

(1) To consider problems affecting youth and recommend solutions or approaches to these problems to State and local governments and their officials;

(2) To promote statewide activities for the benefit of youth; and,

(3) To elect the youth representatives to the Youth Advisory Council. (1975, c. 879, s. 28.)

§ 143B-388. Local youth councils. — The primary purpose of local youth councils is to promote participation by youth in programs affecting civic and governmental affairs. (1975, c. 879, s. 29.)

Part 8. North Carolina Marine Science Council.

§ 143B-389. North Carolina Marine Science Council — creation; powers and duties. — There is hereby created the North Carolina Marine Science Council of the Department of Administration. The North Carolina Marine Science Council shall have the following functions and duties:

(1) To encourage the use and study of the ocean, estuarine, and coastal waters of the State of North Carolina by citizens and industries of the State;
(2) To foster education and training in ocean science technology in the State of North Carolina, including extension and continuing education;
(3) To assist in maintaining liaison with the corresponding authorities of nearby coastal states;
(4) To advise in the development and maintenance of the continuing inventory of the ocean resources of the State of North Carolina and the industries and institutions that have significant competence in the science and industry of the oceans, including the personnel and facilities;
(5) To advise in the coordination of efforts toward full development of the State's marine resources with proper attention being given to the need for conservation;
(6) To coordinate plans for, and work with relevant governmental agencies in, the implementation of all federal, State, and local legislation relating to coastal and marine resources;
(7) To review all research, education, and management programs relating to coastal and marine resources and to recommend revision when appropriate; and
(8) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 31.)

§ 143B-390. North Carolina Marine Science Council — members; selection; quorum; compensation. — The North Carolina Marine Science Council of the Department of Administration shall consist of 25 members appointed by the Governor. The composition of the Council shall be as follows: 21 members appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the sea; one member representing the Department of Commerce in the area of ports and waterways; two members representing the Department of Natural Resources and Community Development in the area of coastal resources and environmental protection; and one member representing the Department of Human Resources in the area of health services. The initial members of the Council shall be the appointed members of the North Carolina Marine Science Council who shall serve for a period equal to the remainder of their current terms on the North Carolina Marine Science Council, 12 of whose appointments expire June 17, 1977, five of whose appointments expire June 17, 1979, and four of whose appointments expire June 17, 1981. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors, with the exception of those from State agencies, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 32; 1977, c. 464, s. 41; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment, effective July 1, 1977, substituted "Department of Commerce" for "Department of Transportation" in the second sentence.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 9. North Carolina Human Relations Council.

§ 143B-391. North Carolina Human Relations Council — creation; powers and duties. — There is hereby created the North Carolina Human Relations Council of the Department of Administration. The North Carolina Human Relations Council shall have the following functions and duties:

(1) To study problems concerning human relations;
(2) To promote equality of opportunity for all citizens;
(3) To promote understanding, respect, and goodwill among all citizens;
(4) To provide channels of communication among the races;
(5) To encourage the employment of qualified people without regard to race;
(6) To encourage youths to become better trained and qualified for employment;
(7) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(8) To enlist the cooperation and assistance of all State and local government officials in the attainment of the objectives of the Council;
(9) To assist local good neighborhood councils and biracial human relations committees in promoting activities related to the functions of the Council enumerated above; and
(10) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 34.)

§ 143B-392. North Carolina Human Relations Council — members; selection; quorum; compensation. — The Human Relations Council of the Department of Administration shall consist of 20 members appointed by the Governor to serve at his pleasure.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35.)

Part 10. Council on the Status of Women.

§ 143B-393. Council on the Status of Women — creation; powers and duties. — There is hereby created the Council on the Status of Women of the Department of Administration. The Council on the Status of Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 37.)

§ 143B-394. Council on the Status of Women — members; selection; quorum; compensation. — The Council on the Status of Women of the Department of Administration shall consist of 20 members appointed by the Governor. The initial members of the Council shall be the appointed members of the Council on the Status of Women, three of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1978. Thirteen additional members shall be appointed in 1977, six of whom shall serve terms expiring June 30, 1978, and seven of whom shall serve terms expiring June 30, 1979. At the ends of the respective terms of office of the initial members of the Council and of the 13 members added in 1977, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members of the Council shall be representative of age, sex, ethnic and geographic backgrounds.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 38; 1977, c. 818.)

Editor's Note. — The 1977 amendment substituted "20 members" for "seven members" in the first sentence, rewrote the second sentence, added the present third sentence, inserted "and of the 13 members added in 1977" in the present fourth sentence and added the present sixth sentence, all in the first paragraph.

Part 10A. Office of Coordinator of Services for Victims of Sexual Assault.

§ 143B-394.1. Office of Coordinator of Services for Victims of Sexual Assault — purpose. — The ultimate goal of this Article is to establish a network of coordinated public and private services for victims of sexual assault, incorporating existing programs as well as aiding in the development of new programs. (1977, c. 997, s. 1.)

Editor's Note. — Session Laws 1977, c. 997, s. 3, makes the Part effective July 1, 1977.

§ 143B-394.2. Office of Coordinator of Services for Victims of Sexual Assault—office created.—(a) The office of Coordinator of Services for Victims of Sexual Assault is hereby created in the Department of Administration. The office shall be under the direction and supervision of a full-time salaried State employee who shall be designated as the State Coordinator. The State Coordinator shall be appointed by the Secretary of the Department of Administration and shall receive a salary commensurate with State government pay schedules for the duties of this office, or such salary to be set by the State Personnel Board pursuant to G.S. 126-4. Necessary travel allowance or reimbursement for expenses shall be authorized for the State Coordinator in accordance with G.S. 138-6. Sufficient clerical staff shall be provided under the direction of the Secretary of the Department of Administration.

(b) This State Coordinator shall have administrative experience and the recommendation of the North Carolina Rape Crisis Association and the North Carolina Council on the Status of Women. If possible, the State Coordinator shall have public speaking experience, training in rape crisis intervention and education in a related field. (1977, c. 997, s. 1.)

§ 143B-394.3. Office of Coordinator of Services for Victims of Sexual Assault — duties and responsibilities. — The duties of the State Coordinator shall include the following:

(1) To establish an office to facilitate and coordinate all programs and services which deal with the victim of sexual assault;
(2) To research the needs of the State and already existing programs for sexual assault services;
(3) To create a liaison between public services and private services with which victims of sexual assault normally come in contact;
(4) To be an information clearinghouse on all aspects of sexual assault services;
(5) To develop model programs and training techniques to be used to train medical, legal, and psychological personnel (both in the public and private sectors) who deal with the victims of sexual assault, and to aid in implementing these programs to suit the needs of specific communities;
(6) To be available to aid and advise sexual assault services on operational and functional problems; and
(7) To develop and coordinate a public education program for the State of North Carolina on the phenomenon of sexual assault. (1977, c. 997, s. 1.)

Part 11. North Carolina Manpower Council.

§§ 143B-395, 143B-396: Repealed by Session Laws 1977, c. 771, s. 14.

Cross Reference. — As to the North Carolina Employment and Training Council in the Department of Natural Resources and Community Development, see §§ 143B-340, 143B-341.

Editor's Note. — Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 12. Standardization Committee.

§ 143B-397. Standardization Committee — creation; powers and duties. — There is hereby created the Standardization Committee of the Department of Administration.

It shall be the duty of the Standardization Committee to recommend to the Secretary of Administration the establishment and modification of standard

specifications wherever feasible applying to articles purchased or leased. In the generation of recommendations for any specifications the Standardization Committee shall seek the advice, assistance and cooperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification recommended for any commodity shall insofar as practicable satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption, by the Secretary, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every State purchase of commodity described in such specifications. In the preparation of specifications the Standardization Committee shall have the power to make use of any State laboratory with or without charge for tests in making determination of quality. (1975, c. 879, s. 43.)

§ 143B-398. Standardization Committee — members; selection; quorum. — The Standardization Committee shall consist of seven members as follows:

(1) The Secretary of Administration who shall be the chairman,
(2) An engineer from the Department of Transportation to be appointed upon recommendation by the Secretary of Transportation,
(3) A representative of State or local education agencies,
(4) A representative of the State departments,
(5) A representative of the State charitable and correctional institutions, and
(6) Two members of the Advisory Budget Commission to be designated by the Governor.

Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this Article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman.

The members of the Committee are appointed by the Governor to serve at the pleasure of the Governor.

All clerical and other services required by the Committee shall be supplied by the Secretary of Administration. Laboratory services will be provided by the head of the department in which the laboratory is located. (1975, c. 879, s. 44.)

Part 13. Veterans' Affairs Commission.

§ 143B-399. Veterans' Affairs Commission — creation, powers and duties. — There is hereby created the Veterans' Affairs Commission of the Department of Administration. The Veterans' Affairs Commission shall have the following functions and duties:

(1) To advise the Governor on matters relating to the affairs of veterans in North Carolina;
(2) To maintain a continuing review of the operation and budgeting of existing programs for veterans and their dependents in the State and to make any recommendations to the Governor for improvements and additions to such matters to which the Governor shall give due consideration;
(3) To serve collectively as a liaison between the Division of Veterans Affairs and the veterans organizations represented on the commission;
(4) To promulgate rules and regulations concerning the awarding of scholarships for children of North Carolina veterans as provided by Article 4 of Chapter 165 of the General Statutes of North Carolina. The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent

with the provisions of this Chapter heretofore adopted by the State Board of Veterans' Affairs shall remain in full force and effect unless and until repealed or superseded by action of the Veterans Affairs Commission. All rules and regulations adopted by the Commission shall be enforced by the Division of Veterans' Affairs; and

(5) To advise the Governor on any matter the Governor may refer to it. (1973, c. 620, s. 7; 1977, c. 70, ss. 24, 25, 27; c. 622.)

Editor's Note. — The above section was formerly § 143B-252. It was recodified as § 143B-399 by Session Laws 1977, c. 70, effective April 1, 1977.

Session Laws 1977, c. 622, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in the first sentence, substituted "Governor" for "Secretary of Military and Veterans Affairs" and for "Secretary" throughout the section, substituted "affairs of veterans in North Carolina" for "Department's activities with respect to veterans" in subdivision (1), substituted "matters" for "programs" near the end of subdivision (2) and substituted "Division of Veterans Affairs" for "Department" in subdivision (3) and for "Department of Military and Veterans Affairs" in the last sentence of subdivision (4).

Session Laws 1977, c. 637, s. 2, provided that whenever the words "Secretary of Military and Veterans Affairs" were used in the provisions of this section, the same should be deleted and the words "Secretary of the Department of Administration" should be inserted in lieu thereof. All references to the Secretary of Military and Veterans Affairs in this section, however, were eliminated by the amendment in Session Laws 1977, c. 622.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-400. Veterans' Affairs Commission — members; selection; quorum; compensation. — The Veterans' Affairs Commission of the Department of Administration shall consist of one voting member from each congressional district, all of whom shall be veterans, appointed by the Governor for four-year terms. In making these appointments, the Governor shall insure that both major political parties will be continuously represented on the Veterans' Affairs Commission.

The initial members of the Commission shall be the appointed members of the current Veterans' Affairs Commission who shall serve for the remainder of their current terms and six additional members appointed by the Governor for terms expiring June 30, 1981. Thereafter, all members shall be appointed for terms of four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commission in accordance with provisions of G.S. 143B-13.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district. If on July 1, 1977, or at any time thereafter due to congressional redistricting, two or more members of the Veterans' Affairs Commission shall reside in the same congressional district then such members shall continue to serve as members of the Commission for a period equal to the remainder of their current terms on the Commission provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the Veterans' Affairs Commission who is a resident of each congressional district in the State.

The Governor shall designate from the membership of the Commission a chairman and vice-chairman of the Commission who shall serve at the pleasure of the Governor. The Secretary of the Department of Administration or his designee shall serve as secretary of the Commission.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Veterans' Affairs Commission shall meet at least twice a year and may hold special meetings at any time or place within the State at the call of the chairman, at the call of the Secretary of the Department of Administration or upon the written request of at least six members.

All clerical and other services required by the Commission shall be provided by the Secretary of the Department of Administration. (1973, c. 620, s. 8; 1977, c. 70, ss. 24, 25, 27; c. 637, s. 1.)

Editor's Note. — The above section was formerly § 143B-253. It was recodified as § 143B-400 by Session Laws 1977, c. 70, effective April 1, 1977.

Session Laws 1977, c. 637, s. 1, inserted "of the Department of Administration," and substituted "one voting member from each congressional district" for "five voting members" and "four-year" for "five-year" in the first sentence of the first paragraph, rewrote the second paragraph, added the third paragraph and rewrote the present third paragraph, inserted "at the call of the Secretary of the Department of Administration" and substituted "six members" for "three members" in the next-to-last paragraph, substituted "Secretary of the Department of Administration" for "Secretary of Military and Veterans Affairs" in the last paragraph and made minor changes in wording throughout the section.

Session Laws 1977, c. 637, s. 4 provides: "The terms of any of the current members of the Veterans' Affairs Commission which expire on May 16 of any year are hereby extended to expire on June 30 of such particular year."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-401. Veterans' Affairs Commission Advisory Committee — members; compensation. — The department commander or official head of each veterans' organization which has been chartered by an act of the United States Congress and which is legally constituted and operating in this State pursuant to said charter shall constitute an Advisory Committee to the Veterans' Affairs Commission. Members of the Veterans' Affairs Commission Advisory Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 637, s. 3.)

Part 14. Advocacy Council for the Handicapped.

§ 143B-402. Advocacy Council for the Mentally Ill and Developmentally Disabled — creation; powers; duties. — There is hereby created in the Department of Administration an Advocacy Council for the Mentally Ill and Developmentally Disabled. The Council shall have the following functions and duties:

(1) To provide for and supervise a statewide program of protection and advocacy in accordance with section 113 of Public Law 94-103, Developmental Disabilities Services and Facilities Construction Act, as amended;

(2) To pursue legal, administrative, or other appropriate remedies to insure the protection of the rights of all developmentally and mentally disabled persons who are receiving treatment, services, or habilitation from any State, local, or area program;

(3) To review and recommend changes in all laws, rules, regulations, programs and policies of this State or any agency or subdivision thereof to insure the rights of the mentally ill and developmentally disabled are safeguarded;

(4) To investigate complaints concerning the violation of the rights of the mentally ill and developmentally disabled and to take appropriate action;

(5) To contract with public agencies or private nonprofit corporations to fulfill any of the functions and duties provided herein;
(6) To provide an annual report to the Governor and the Secretary of Administration on the status, effectiveness, and needs of the protection and advocacy program; and
(7) To perform such other functions as are necessary to protect the rights of the mentally ill and developmentally disabled or as may be assigned by the Secretary of Administration. (1977, c. 822, s. 1.)

Editor's Note. — Session Laws 1977, c. 822, s. 3, makes the act effective July 1, 1977.

§ 143B-403. Advocacy Council for the Mentally Ill and Developmentally Disabled — members; selection; quorum; compensation; meetings; staff; etc. — The Advocacy Council for the Mentally Ill and Developmentally Disabled, of the Department of Administration, shall consist of 11 members. The composition and appointment of the Council shall be as follows:

Three members appointed by the Governor from legal, citizen, or advisory groups; two members appointed by the Governor who are parents of developmentally disabled persons; one member appointed by the Governor who is developmentally disabled; one member appointed by the Governor who has been a volunteer advocate for the developmentally disabled.

Two members appointed by the Speaker of the House from the members of the House of Representatives, who have demonstrated an interest in the mentally ill and developmentally disabled.

Two members appointed by the President of the Senate from the members of the Senate, who have demonstrated an interest in the mentally ill and developmentally disabled.

Provided no members shall be providers of services to the mentally ill and developmentally disabled or representatives of public agencies.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Initial appointments shall be made as soon as practicable after the effective date of this Part but no later than July 1, 1977, for terms to expire June 30, 1980. At the end of the terms of the initial members, the appointment of the successors of the members appointed by the Governor shall be for terms of four years and until their successors are appointed and qualify. The appointment of the successors of the initial members appointed by the Speaker of the House and President of the Senate shall be for terms of two years and until their successors are appointed and qualify. Appointment to fill a vacancy on the Council created by resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, or travel and subsistence expenses under G.S. 120-3.1 as appropriate.

The Council shall meet at least once a quarter and at such other times as called by the chairman or upon written request of at least six members. A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration.

The staff of the Developmental Disabilities Council of the Department of Human Resources shall provide additional planning assistance when requested by the Advocacy Council. (1977, c. 822, s. 1.)

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-404. North Carolina State Commission of Indian Affairs — creation; name. — There is hereby created and established a commission to be known as the North Carolina State Commission of Indian Affairs of the Department of Administration. (1977, c. 849, s. 1.)

Editor's Note. — Session Laws 1977, c. 849, s. 2, makes the act effective July 1, 1977.

§ 143B-405. North Carolina State Commission of Indian Affairs — purposes for creation. — The purposes of the Commission shall be to deal fairly and effectively with Indian affairs; to bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina; to provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships; to assist Indian communities in social and economic development; and to promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1.)

§ 143B-406. North Carolina State Commission of Indian Affairs — duties; use of funds. — It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State, and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State, and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes, and communities presently existing in the State of North Carolina; and to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups, and to initiate procedures for their recognition by the federal government. (1977, c. 849, s. 1.)

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation. — (a) The State Commission of Indian Affairs shall consist of the Speaker of the House of Representatives, the Lieutenant Governor, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Natural Resources and Community Development, and the Commissioner of Labor. Fifteen Indian members shall be selected by tribal or community consent from among the Coharie, Cumberland, Haliwa, Lumbee, and Waccamaw Siouan, and the Native Americans located in Guilford and Mecklenburg Counties. The Coharie shall have two members; the Cumberland, two; the Haliwa, two; the Lumbees, three; the Waccamaw Siouan, two; the Guilford Native Americans, two; and the Metrolina Native Americans, two.

If the Cherokees should choose to participate, then they shall have two members on the board of directors. The total membership will be 17.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms, except that at the first election of Commission members by tribes and groups, one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from each tribe or group to a three-year term. Thereafter, Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the Commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1.)

Editor's Note. — Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in this section as enacted by Session Laws 1977, c. 849.

§ 143B-408. North Carolina State Commission of Indian Affairs — meetings; quorum; proxy vote. — (a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the Commission and two members by virtue of their office within State government must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1.)

§ 143B-409. North Carolina State Commission of Indian Affairs — reports. — The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1977, c. 849, s. 1.)

Editor's Note. — Session Laws 1977, c. 849, contained two identical sections, numbered §§ 143B-400.6 and 143B-400.9, which have been codified above as § 143B-409.

§ 143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff. — Fiscal records shall be kept by the Secretary of Administration and will be subject to annual audit by a certified public accountant. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1.)

§ 143B-411. North Carolina State Commission of Indian Affairs — executive director; employees. — The Commission may, subject to legislative

or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and should be of Indian extraction. (1977, c. 849, s. 1.)

Part 16. Governor's Council on Employment of the Handicapped.

§ 143B-412. Governor's Council on Employment of the Handicapped — creation; powers and duties. — There is hereby created the Governor's Council on the Employment of the Handicapped of the Department of Administration. The Governor's Council on the Employment of the Handicapped shall have the following functions and duties:

(1) To advise and assist the Department on the continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field;

(2) To work in close cooperation with the President's Committee on the Employment of the Physically Handicapped to carry out more effectively the purpose of Article 29A of Chapter 143 of the General Statutes, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped;

(3) To promote and encourage the holding of appropriate ceremonies throughout the State during the "National Employ the Physically Handicapped Week," the purpose of which ceremony shall be to enlist public support for interest in the employment of the physically handicapped; and

(4) The Council shall advise the Secretary of Administration upon any matter the Secretary may refer to it. (1973, c. 476, s. 177; 1977, c. 872, s. 2.)

Cross Reference. — As to powers and duties of the Governor's Council on Employment of the Handicapped, see also § 143-283.1 et seq.

Editor's Note. — The above section was formerly § 143B-184. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 2, effective July 1, 1977.

§ 143B-413. Governor's Council on Employment of the Handicapped — members; selection; quorum; compensation. — The Governor's Council on Employment of the Handicapped of the Department of Administration shall consist of 22 members appointed by the Governor. The composition of the Council shall be as follows: four members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance, the Chairman of the Employment Security Commission and the Secretary of the Department of Human Resources or his designee; and 18 members to be appointed by the Governor.

The initial members of the Council shall be the members of the former Governor's Council on Employment of Handicapped of the Department of Human Resources whose terms shall expire on the dates they would have, had said Council of Department of Human Resources not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members, with the exception of those from State agencies,

shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1973, c. 476, s. 178; 1977, c. 872, s. 2.)

Editor's Note. — The above section was formerly § 143B-185. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 2, effective July 1, 1977.

Part 17. Governor's Advocacy Council on Children and Youth.

§ 143B-414. Governor's Advocacy Council on Children and Youth — creation; powers and duties. — There is hereby created the Governor's Advocacy Council on Children and Youth of the Department of Administration. The Council shall have the following functions and duties:

(1) To act as an advocate for children and youth within State and local governments, and with private agencies serving children and youth;

(2) To provide assistance in the development and coordination of child advocacy systems at the regional and local levels within the State;

(3) To perform a continuing review of existing programs of State government for children and youth and their families;

(4) To, in cooperation with State, local or private agencies, identify needs of children and youth and their families that are not currently being met and recommend new programs or improvement of existing programs;

(5) To review any new programs affecting children and youth proposed by any State agency and recommend changes to avoid duplication of services, to promote better planning, or otherwise to make more effective use of available resources;

(6) To meet at least annually with the Governor and present a written report concerning the health and well-being of North Carolina's children and the effectiveness of current programs and the need for new programs for children and youth;

(7) To provide information to the general public and State, local and private agencies serving children and youth and their families concerning the activities and findings of the Council; and

(8) To perform such other functions as may be assigned to it by the Secretary of Administration or any legislative committee. (1973, c. 476, s. 180; 1977, c. 872, s. 6.)

Editor's Note. — The above section was formerly § 143B-186. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 6, effective July 1, 1977.

§ 143B-415. Governor's Advocacy Council on Children and Youth — members; selection; quorum; compensation. — The Governor's Advocacy Council on Children and Youth shall consist of 17 members. The composition of

the Council shall be as follows: two members appointed by the President of the Senate from the membership of the Senate; two members selected by the Speaker of the House of Representatives from the membership of the House of Representatives; 13 members appointed by the Governor.

In selecting the 13 members of the Council, the Governor shall select nine public-spirited adult citizens who have an interest in and knowledge of children and youth, persons who work with children or representatives of organizations concerned with problems of children and youth. The remaining four members to be appointed by the Governor shall consist of two youths of each sex who are 18 years of age or under at the time of their appointments.

The initial members of the Council shall be the members of the former Governor's Advocacy Council on Children and Youth of the Department of Human Resources whose terms shall expire on the date they would have, had said Council of the Department of Human Resources not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be as provided in this section and for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, death, dismissal, or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate from the membership of the Council a chairman and a vice-chairman to serve at his pleasure.

The Council shall meet at least quarterly and upon the call of the chairman or upon written request of at least nine members.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1973, c. 476, s. 181; 1977, c. 872, s. 6.)

Editor's Note. — The above section was formerly § 143B-187. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 6, effective July 1, 1977.

§ 143B-416. Governor's Advocacy Council on Children and Youth — access to information. — Unless otherwise prohibited by law, every State and local agency, department, board, commission, school, or corporation that supervises, administers, or otherwise directs programs or services for children and youth shall provide the Council with any requested information relating to such programs and services. (1977, c. 872, s. 6.)

Editor's Note. — Session Laws 1977, c. 872, s. 9, makes the act effective July 1, 1977.

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties. — There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:
   a. Office of the Governor
   b. Department of Administration

c. Department of Correction
d. Department of Cultural Resources
e. Department of Revenue
f. Department of Transportation
g. Department of Natural Resources and Community Development
h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Human Resources
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Education
p. Department of Justice
q. Department of Agriculture
r. Department of Labor
s. Department of Insurance;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967.)

Editor's Note. — Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in subdivision (1)g of this section as enacted by Session Laws 1977, c. 967.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-418. North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services. — The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the Lieutenant Governor, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges and technical institutes; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 967.)

§ 143B-419. North Carolina Internship Council — committees for screening applications. — The North Carolina Internship Council may designate one representative from each office or department enumerated in G.S. 143B-417 to serve on a committee to assist pursuant to guidelines adopted by the Council, in the screening and selection of applicants for student internships. (1977, c. 967.)

Part 19. Jobs for Veterans Committee.

§ 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties. — (a) There is hereby created and established in the North Carolina Department of Administration, Division of Veterans Affairs, a committee to be known as the Governor's Jobs for Veterans Committee, with such members as the Governor shall appoint. Members of the Committee shall serve at the pleasure of the Governor. The Secretary of Administration, with the concurrence of the Governor, shall appoint a chairman to administer this Committee who shall be subject to the direction and supervision of the Secretary. The chairman shall serve at the pleasure of the Secretary. The chairman shall devote full time to his duties of office.

(b) Subject to the general supervision of the Secretary, the duties of the chairman shall include but not be limited to the following:

(1) Serving as a liaison between the Office of the Governor and all State agencies to insure that veterans receive the employment preference to which they are legally entitled and that such State agencies list available jobs with appropriate public employment services;
(2) Evaluating existing programs designed to benefit veterans and submitting reports and recommendations to the Governor and secretary;
(3) Developing and furthering favorable employer attitudes toward the employment of veterans by appropriate promulgation of information concerning veterans and the functions of the Committee;
(4) Serving as a liaison between the Committee and communities throughout the State to the end that civic committees and volunteer groups are formed and utilized to promote the objectives of the Committee;
(5) Assisting employers in properly designing affirmative action plans as they relate to handicapped and Vietnam-era veterans;
(6) Serving as a liaison between veterans and State agencies on questions regarding the employment practices of such State agencies. (1977, c. 1032.)

§ 143B-421. Governor's Jobs for Veterans Committee — authority to receive grants-in-aid. — The Committee is hereby authorized to receive grants-in-aid from the federal government and charitable organizations for carrying out its duties. (1977, c. 1032.)

§§ 143B-422 to 143B-426: Reserved for future codification purposes.

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-427. Department of Commerce — creation. — There is hereby

recreated and reconstituted a Department to be known as the "Department of Commerce," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 198, s. 1.)

Editor's Note. — Session Laws 1977, c. 198, ss. 28 and 29 provide:

"Sec. 28. All records, personnel, property, and unexpended balances of appropriations to any agency or subunit transferred by this act to the recreated and reconstituted Department of Commerce are hereby transferred in accordance with the provisions of this act to the said Department of Commerce.

"Sec. 29. All transfers of personnel, equipment, appropriations and functions of an agency or division transferred by this act to the recreated and reconstituted Department of Commerce shall be completed by July 1, 1977, but the Secretary of Commerce shall have the authority over such personnel, equipment, appropriations and functions transferred by this act upon the effective date of this act. Nothing in this section is intended to supersede G.S. 143B-405(3) [143B-431], as added by this act, or Chapter 65 of the Session Laws of 1977."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-428. Department of Commerce — declaration of policy. — It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; to promote the management of North Carolina's energy resources and the development of a State energy policy; and to assure throughout State government, the coordination of North Carolina's economic development efforts. (1977, c. 198, s. 1.)

§ 143B-429. Department of Commerce — duties. — It shall be the duty of the Department of Commerce to provide for and promote the implementation of the declared policy of the State of North Carolina as provided in G.S. 143B-428, to promote and assist in the total economic development of North Carolina in accord with such declared policy and to perform such other duties and functions as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. (1977, c. 198, s. 1.)

§ 143B-430. Secretary of Commerce — powers and duties. — The head of the Department of Commerce is the Secretary of Commerce. The Secretary of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. The Secretary of Commerce shall be responsible for effectively and efficiently organizing the Department of Commerce to promote the policy of the State of North Carolina as outlined in G.S. 143B-428 and to promote statewide economic development in accord with that policy. Except as otherwise specificially provided in this Article and in Article 1 of this Chapter, the functions, powers, duties and obligations of every agency or subunit in the Department of Commerce shall be prescribed by the Secretary of Commerce. (1977, c. 198, s. 1.)

§ 143B-431. Department of Commerce — functions. — The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor

force development, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 15 of Chapter 143A, to wit:

a. The State Board of Alcoholic Control,
b. The North Carolina Utilities Commission,
c. The Employment Security Commission,
d. The North Carolina Industrial Commission,
e. State Banking Commission and the Commissioner of Banks,
f. Savings and Loan Association Division,
g. The State Savings and Loan Commission,
h. Credit Union Commission,
i. The North Carolina Milk Commission,
j. The North Carolina Mutual Burial Association Commission,
k. The North Carolina Rural Electrification Authority,
l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State.

Any agency transferred to the Department of Commerce by a type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article. (1977, c. 198, s. 1.)

§ 143B-432. Transfers to Department of Commerce. — The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a type I transfer, as defined in G.S. 143A-6. (1977, c. 198, s. 1.)

Editor's Note. — Because this section relates to past events, the title of the Department of Natural and Economic Resources has not been changed to "Department of Natural Resources and Community Development" pursuant to Session Laws 1977, c. 771, s. 4.

§ 143B-433. Department of Commerce — organization. — The Department of Commerce shall be organized to include:

(1) The State Board of Alcoholic Control,
(2) The North Carolina Utilities Commission,
(3) The Employment Security Commission,
(4) The North Carolina Industrial Commission,
(5) State Banking Commission,
(6) Savings and Loan Association Division,
(7) The State Savings and Loan Commission,
(8) Credit Union Commission,

(9) The North Carolina Milk Commission,
(10) The North Carolina Mutual Burial Association Commission,
(11) North Carolina Cemetery Commission,
(12) The North Carolina Rural Electrification Authority,
(13) Science and Technology Committee,
(14) North Carolina Science and Technology Research Center,
(15) The North Carolina State Ports Authority,
(16) North Carolina National Park, Parkway and Forests Development Council,
(17) Economic Development Board,
(18) Labor Force Development Council,
(19) Energy Policy Council,
(20) Energy Division,
(21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes,

and such divisions as may be established pursuant to Article 1 of this Chapter.
(1977, c. 198, s. 1.)

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership. — (a) There is hereby created within the Department of Commerce an Economic Development Board which, in conjunction with the Secretary of Commerce, shall be responsible for promoting the economic development of North Carolina in accord with the policy of the State of North Carolina as set out in G.S. 143B-428. In conjunction with the Secretary of Commerce, the Economic Development Board shall formulate a program for the economic development of the State of North Carolina and assist the Secretary of Commerce in carrying out his duties and powers as the chief economic development spokesman and administrator for the State in matters relating to the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce shall prepare a budget, which shall be subject to the approval of the Economic Development Board, for each division of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce, with the approval of the Economic Development Board, shall hire the head of each such division and each such person shall serve at the pleasure of the Secretary of Commerce. The Economic Development Board shall meet at least bimonthly at the call of the chairman of the Economic Development Board or the Secretary of Commerce.

The Economic Development Board shall consist of 25 members. The Secretary of Commerce, the Lieutenant Governor, and the Speaker of the House of Representatives shall be members of the Economic Development Board. The Governor shall appoint 22 members to the Board.

The initial appointments by the Governor shall be made on or after the date of ratification, 11 terms to expire July 1, 1979, and 11 terms to expire on July 1, 1981. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of four years. Any vacancy occurring in the membership of the Economic Development Board appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member of the Economic Development Board appointed by the Governor.

The Governor shall designate from among the members of the Economic Development Board a chairman and a vice-chairman. The Secretary of Commerce or his designee shall serve as Secretary of the Economic Development

Board. If a vacancy occurs in the office of the Lieutenant Governor, the President pro tempore shall fill the vacancy. If a vacancy occurs in the office of the Speaker of the House of Representatives, the Speaker pro tempore shall fill the vacancy.

The members of the Economic Development Board appointed by the Governor shall receive per diem and necessary travel and subsistence expenses payable to members of State boards and agencies generally pursuant to G.S. 138-5 and 138-6, as the case may be; provided, however, that the chairman of the Economic Development Board and the Lieutenant Governor shall not be entitled to receive per diem in addition to salary. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(b) All clerical and other services required by the Economic Development Board shall be supplied by the Secretary of Commerce.

(c) It shall be the duty of the chairman of the Economic Development Board:

(1) To organize the work of the Economic Development Board into committees with respect to the divisions of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries and

(2) To assign responsibilities to each committee.

The salary of the chairman of the Economic Development Board shall be set by the Governor with the approval of the Advisory Budget Commission. (1977, c. 198, s. 1.)

§ 143B-435. Publications. — The Department of Commerce may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Commerce may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11; 1973, c. 1262, s. 28; 1977, c. 198, ss. 20, 26.)

Editor's Note. — The above section was formerly § 113-14. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in two places.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-436. Advertising of State resources and advantages. — It is hereby declared to be the duty of the Department of Commerce to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4; 1973, c. 1262, s. 86; 1977, c. 198, ss. 20, 26.)

Editor's Note. — The above section was formerly § 113-15. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" near the beginning of the section.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-437. Investigation of impact of proposed new and expanding industry. — The Department of Commerce shall conduct an evaluation in conjunction with the Department of Natural Resources and Community Development of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. (1971, c. 824; 1973, c. 1262, ss. 28, 86; 1977, c. 198, ss. 19, 26; c. 771, s. 4.)

Editor's Note. — The above section was formerly § 113-15.2. It was rewritten by Session Laws 1977, c. 198, s. 19, and recodified in this Article by s. 26 of the same act.

Session Laws 1977, c. 771, s. 4, amended this section by substituting "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources."

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

Part 3. Labor Force Development.

§ 143B-438. Labor Force Development Council — creation, duties and responsibilities. — (a) There is hereby created within the Department of Commerce a Labor Force Development Council, hereinafter referred to as the Council, to be responsible for advising and assisting the Secretary of Commerce in developing and carrying out policies and programs related to the development and utilization of the labor force to support industrial and economic expansion in North Carolina. The Council shall be responsible for:

(1) Formulating and recommending to the Secretary of Commerce and the Governor labor force policies and objectives to support industrial expansion;

(2) Providing for the effective participation of leading business, labor and education leaders in developing active support for policy and programs that will contribute to economic expansion and development of labor force capabilities to support industrial expansion;

(3) Making recommendations to appropriate State agencies, the Governor, and the citizens of the State on improving the effectiveness of employment training and related labor force development services to support industrial expansion efforts; and

(4) Advising and assisting the Secretary of Commerce in such additional areas that may be deemed appropriate by the Secretary of Commerce.

(b) The Council shall consist of 13 members. The Secretary of Commerce shall be a member. Twelve members shall be appointed by the Governor, at least one of whom shall represent the Department of Community Colleges. Initial terms of office for the 12 members appointed by the Governor shall be as follows: Three members shall be appointed for terms ending July 1, 1979; three members for terms ending July 1, 1980, and six members for terms ending July 1, 1981. Subsequent appointments shall be for four years. Any vacancy occurring in the membership of the Council shall be filled by appointment of the Governor for the unexpired term. The Governor shall have the authority to remove any member.

(c) The Secretary of Commerce shall serve as chairman of the Council. The Secretary of Commerce shall be responsible for establishing operating procedures, providing clerical and other services required by the Council, and calling meetings of the Council, which shall meet not less than annually. Members shall receive the per diem and reimbursement for necessary expenses payable to members of boards and agencies generally pursuant to G.S. 138-5, 138-6 or G.S. 120-3.1. (1977, c. 198, s. 1.)

Part 4. Credit Union Commission.

§ 143B-439. Credit Union Commission. — (a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Four members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the chairman of the Credit Union Commission or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5.

(b) The relationship between the Secretary of Commerce and the Credit Union Commission shall be as defined for a type II transfer under this Chapter.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this State.

An appeal may be taken to the Commission from any finding, ruling, order, decision or the final action of the Administrator by any credit union which feels aggrieved thereby. Notice of such appeal shall be filed with the chairman of the Commission within 30 days after such finding, ruling, order, decision or other action, and a copy served upon the Administrator. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is grounded. The Commission shall fix a date, time and place for hearing said appeal, and shall notify the credit union or its attorney of record thereof at least 30 days prior to the date of said hearing. (1971, c. 864, s. 17; 1973, cc. 97, 1254; 1975, c. 709, ss. 4-6; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143A-181. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

The second 1973 amendment substituted "Four members" for "Three members" at the beginning of the sixth sentence of subsection (a).

The 1975 amendment, in subsection (a), rewrote the second sentence, inserted the present fifth sentence, and substituted "chairman of the Credit Union Commission" for "Secretary of Commerce" in the present tenth sentence.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 5. Science and Technology Committee.

§ 143B-440. Science and Technology Committee — creation; powers and duties. — There is hereby created the Science and Technology Committee of the Department of Commerce. The Committee shall have the following functions and duties:

(1) The Committee shall be responsible for the allocation of funds for, but

not necessarily limited to, such objects as grants for scientific engineering or technological projects, the support of scientific or research personnel, the purchase of equipment or supplies, the construction or modification of facilities, and the employment of consultants. In general, such allocations will be made for the support of activities, equipment and facilities in the space and associated science fields relevant to the objectives of the Committee which are associated with the existing public or private agencies in the State, such as the public and private institutions of higher education, the Research Triangle Institute and similar entities.

(2) The Committee's activities shall be centered in the Research Triangle, and will be closely allied to the Research Triangle Institute.

(3) The Committee shall encourage liaison between industry, educational institutions, the Research Triangle of North Carolina, and federal agencies, such as the National Aeronautics and Space Administration, the Atomic Energy Commission, the Department of Defense, the National Science Foundation, and the National Institute of Health.

(4) The Committee shall hold regular meetings to inform industry of the possible space and nuclear applications which can accelerate the growth of the North Carolina industrial economy.

(5) The Committee shall encourage the cooperation of the State's industrial community, to the end that industry shall assist in screening and identifying research results for possible industrial applications.

(6) The Committee will from time to time, arrange to have seminars, short courses, visits and practical demonstrations held to foster interest in the results of research as a means of achieving economic progress.

(7) To advise the Secretary of Commerce upon any matter the Secretary might refer to it. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26.)

Editor's Note. — The above section was formerly § 143B-331. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in the first sentence and "Secretary of Commerce" for "Secretary of Natural and Economic Resources" in subdivision (7).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-441. Science and Technology Committee — members; selection; removal; chairman; compensation; quorum; services. — The Science and Technology Committee shall consist of 15 members appointed by the Governor as follows: Two members shall be from the University of North Carolina at Chapel Hill; two members shall be from North Carolina State University at Raleigh; two members shall be from Duke University; three members shall be from the membership of the General Assembly; three members shall be from industry within the State; one member shall be appointed upon nomination of the Executive Committee of the Board of the Research Triangle Institute; and two members shall be appointed by the Governor at large. The members appointed from the University of North Carolina at Chapel Hill and from North Carolina State University at Raleigh shall be nominated by the President of the University of North Carolina System. The members appointed from Duke University shall be nominated by the President of Duke University. The initial members of the Science and Technology Committee appointed by the Governor shall include the members of the Board of Science and Technology who shall serve for a period equal to the remainder of their current terms on the Board of Science and Technology, six of whose appointments expire June 30, 1973, and eight of whose appointments expire June 30, 1975. At the end of the respective terms of office of the initial members of the Council, the appointment of their

successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Commerce. (1973, c. 1262, s. 78; 1977, c. 198, ss. 2, 26.)

Editor's Note. — The above section was formerly § 143B-332. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Secretary of Commerce" for "Secretary of Natural and Economic Resources" in the last paragraph.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 6. North Carolina Science and Technology Research Center.

§ 143B-442. Creation of Center. — There is hereby created the "North Carolina Science and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-374. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-443. Administration by Science and Technology Committee. — The activities of the North Carolina Science and Technology Research Center will be administered by the Science and Technology Committee. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26.)

Editor's Note. — The above section was formerly § 143B-375. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Science and Technology Committee" for "Board of Science and Technology" in the catchline and for "North Carolina Board of Science and Technology" at the end of the section.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-444. Acceptance of funds. — The North Carolina Science and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-376. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-445. Applicability of Executive Budget Act. — The North Carolina Science and Technology Research Center is subject to the provisions of Article 1, Chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-377. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Part 7. North Carolina National Park, Parkway and Forests Development Council.

§ 143B-446. North Carolina National Park, Parkway and Forests Development Council — creation; powers and duties. — There is hereby created the North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce. The North Carolina National Park, Parkway and Forests Development Council shall have the following functions and duties:

The Council shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway or the Pisgah or Nantahala national forests. It shall be the duty of the Council to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissioners and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the North Carolina Department of Transportation through the Department of Commerce. The Council shall provide information to the Department of Commerce to be included in the Department's annual report. It shall also file any suggestions or recommendations as it deems proper with the Department of Commerce in respect to such matters as might be of interest to or affect any department of State government. It shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 1262, s. 66; 1977, c. 198, ss. 5, 26.)

Editor's Note. — The above section was formerly § 143B-322. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in four places.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-447. North Carolina National Park, Parkway and Forests Development Council — members; selection; officers; removal; compensation; quorum; services. — The North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce shall consist of seven members appointed by the Governor. The composition of the Council shall be as follows: one member shall be a resident of Buncombe County, one member a resident of Haywood County, one member a resident of Jackson County, one member a resident of Swain County, three members residents of counties adjacent to the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The initial members of the Council shall be the appointed members of the National Park, Parkway and Forests Development Commission who shall serve for a period equal to the remainder of their current terms on the National Park, Parkway and Forests Development Commission. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of four years, or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The current officers of the North Carolina National Park, Parkway and Forests Development Commission shall continue to serve in that capacity for the remainder of their current terms. Thereafter, the Council shall elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Council, but the secretary need not be a member of the Council. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be reelected. In case of vacancies by resignation or death, the office shall be filled by the Council for the unexpired term of said officer.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

Five members of the Council shall constitute a quorum for the transaction of business. (1973, c. 1262, s. 67; 1977, c. 198, ss. 5, 26.)

Editor's Note. — The above section was formerly § 143B-323. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" near the beginning of the first sentence of the first paragraph.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-447.1. North Carolina National Park, Parkway and Forests Development Council — meetings. — The North Carolina National Park, Parkway and Forests Development Council shall meet monthly and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 68; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143B-324. It has been recodified in this Article pursuant to Session Laws 1977, c. 198, s. 26. The 1977 act expressly recodified §§ 143B-322 and 143B-323, but did not mention § 143B-324.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 8. Energy Division.

§ 143B-448. Energy Division. — There is hereby created in the Department of Commerce a division to be known as the Energy Division. (1977, c. 23, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was enacted as § 143A-180.1 by Session Laws 1977, c. 23, s. 4. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1977, c. 23, s. 6, provides: "All records, personnel, property, and unexpended balances of appropriations of the Energy Division of the Department of Military and Veterans Affairs are hereby transferred to the Energy Division of the Department of Commerce."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-449. Organization. — The Division shall be organized and shall have such powers, duties and functions as prescribed by the Secretary of Commerce. (1977, c. 23, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was enacted as § 143A-180.2 by Session Laws 1977, c. 23, s. 4. It was recodifed in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1977, c. 23, s. 6, provides: "All records, personnel, property, and unexpended balances of appropriations of the Energy Division of the Department of Military and Veterans Affairs are hereby transferred to the Energy Division of the Department of Commerce."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-450. Reporting of stocks of coal and petroleum fuels. — The Energy Division of the Department of Commerce may, with the prior express approval of the Energy Policy Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils and propane for resale within the State file with the Energy Division, on forms prepared by the Energy Division, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by said supplier, including said supplier's current inventory and stock of said coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. Such reports and the information contained therein shall be proprietary information available only to regular employees of the Energy Division, except that aggregate tables or schedules consolidating information from said reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time such reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that such reports be filed only at such times as the Energy Policy Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Commerce is authorized and empowered to petition the district court, Division of the General Court of Justice in the county in which the principal office or place of business of said supplier is located for a mandatory injunction compelling said supplier to file said report. (1977, c. 792, s. 8.)

Editor's Note. — Session Laws 1977, c. 792, s. 11, makes this section effective Sept. 1, 1977.

Session Laws 1977, c. 792, s. 10, contains a severability clause.

Part 9. Navigation and Pilotage Commissions.

§ 143B-451. Navigation and pilotage commissions. — The board of commissioners of navigation and pilotage for the Cape Fear River as provided for by G.S. 76-1, and the board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar as provided for by G.S. 76-59 are hereby transferred to the Department of Commerce. All powers, duties and authority of the board of commissioners of navigation and pilotage for the Cape Fear River and Bar and the board of commissioners of navigation and pilotage for Old Topsail Inlet and Beaufort Bar, as provided for in Chapter 76 of the General Statutes, shall continue to vest in the boards, as now provided by statute, independently of the direction, supervision, and control of the Secretary of Commerce. The commissions shall report their activity to the Governor through the Secretary of Commerce. The appointment to the boards shall continue to be made in the manner as provided by Chapter 76 of the General Statutes. (1975, c. 716, s. 1; 1977, c. 65, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143B-354. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. Session Laws 1977, c. 65, s. 4, amended this section by substituting "Department of Commerce" for "Department of Transportation" in one place and "Secretary of Commerce" for "Secretary of Transportation" in two places.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 10. North Carolina State Ports Authority.

§ 143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation. — The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the authority. Members of the General Assembly shall be eligible for appointment to the membership on the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, the Lieutenant Governor shall appoint one member and the Speaker of the House of Representatives shall appoint one member.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years. The members of the Authority appointed by the Governor shall be selected from the state-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

The Speaker of the House of Representatives shall appoint one member to the board from the current membership of the North Carolina House of Representatives on or after March 8, 1977, for a term of office to expire on July 1, 1979, and an appointment shall be made by the Speaker of the House for a term of office each two years thereafter. Any vacancy on the Authority by reason of the resignation, or for any other reason, of the member appointed by the Speaker, shall be filled by the Speaker.

The Lieutenant Governor shall appoint one member to the board from the current membership of the North Carolina Senate on or after March 8, 1977,

for a term of office to expire on July 1, 1979, and an appointment shall be made by the Lieutenant Governor for a term of office each two years thereafter. Any vacancy on the board by reason of the resignation, or for any other reason, of the board member appointed by the Lieutenant Governor shall be filled by the Lieutenant Governor.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority. The members of the Authority shall appoint a treasurer of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-216. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. It was rewritten by amendments in Session Laws 1975, c. 716, s. 2, effective July 1, 1975, and Session Laws 1977, c. 65, s. 1.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Session Laws 1951, c. 776, referred to in the Editor's note under § 143-216 in the Replacement Volume, was amended by Session Laws 1975, c. 638.

Applied in Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth., 284 N.C. 732, 202 S.E.2d 473 (1974).

§ 143B-453. Purposes of Authority. — Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft, terminal railroads and facilities and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports

are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from said harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-217. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-454. Powers of Authority. — In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt-line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads;

(5) The Secretary of Commerce with the approval of the Authority shall appoint such management personnel as he deems necessary to serve at his pleasure. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Secretary of Commerce or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with Authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected.

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof: Provided, however, at no time may the total outstanding indebtedness of the Authority, excluding bond indebtedness exceed a total of five hundred thousand dollars ($500,000) without approval of the Advisory Budget Commission;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45.)

Editor's Note. — The above section was formerly § 143-218. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. Session Laws 1977, c. 198, s. 7, amended this section by substituting "this Part" for "this Article" throughout the section. Session Laws 1977, c. 65, s. 2, amended this section by rewriting subdivision (5), and Session Laws 1977, c. 802, s. 50.45, effective July 1, 1977, amended subdivision (5) as so rewritten by rewriting the

first five sentences of the subdivision as the first three sentences of the subdivision as set out above.

The 1975 amendment, effective July 1, 1975, added the proviso at the end of subdivision (9).

Session Laws 1977, c. 198, s. 31, and c. 802, s. 53, contain severability clauses.

Management Functions Transferred to Secretary of Transportation by Executive Organization Act of 1971. — See opinion of Attorney General to Mr. H.Y. Kinard, Department of Transportation, 44 N.C.A.G. 166 (1974).

§ 143B-455. Approval of acquisition and disposition of real property. — Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina State Ports Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1959, c. 523, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-218.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-456. Issuance of bonds. — (a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, terminal railroad or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized, with the approval of the Advisory Budget Commission, at one time or from time to time to issue negotiable revenue bonds of the Authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-219. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

The 1975 amendment, effective July 1, 1975, inserted "with the approval of the Advisory Budget Commission" near the end of the first sentence of subsection (a).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-457. Power of eminent domain. — For the acquiring of rights-of-way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or by railroad corporations, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-220. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

143B-458. Exchange of property; removal of buildings, etc. — The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this Article. (1945, c. 1097, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-221. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-459. Dealing with federal agencies. — The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this Article, as stated in G.S. 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the Authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board

is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-222. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-460. Terminal railroads. — The Authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the track of such railroad or other conveyances. And the Authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said Department exercise the authority herein given, then in such event it shall be the duty of the said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The Authority shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1945, c. 1097, s. 8; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-223. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Operation of Interstate Railroad Subjects Authority to Suit in Federal Court. — The North Carolina State Ports Authority, by knowlingly entering into the operation of an interstate railroad, has subjected itself to suit in federal court by private parties to enforce rights created by Congress in the exercise of its power over interstate commerce. International Longshoremen's Ass'n v. North Carolina State Ports Auth., 370 F. Supp. 33 (E.D.N.C. 1974).

Collective Bargaining with Railroad Employees. — While this section vests in the Ports Authority the discretionary right to bargain collectively with certain of the railroad employees, it expressly provides that "such agreements with said employees shall be made in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) . . . ." Thus, it is manifest that the North Carolina General Assembly was aware that it was entering into an area of federal

regulation governed by the RLA. International Longshoremen's Ass'n v. North Carolina State Ports Auth., 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1975).

§ 143B-461. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police. — (a) The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina State Ports Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina State Ports Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Attorney General of North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not exceeding fifty dollars ($50.00) or imprisonment not to exceed 30 days.

(d) The chairman of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7; 1965, c. 1074; 1975, 2nd Sess., c. 983, s. 83; 1977, c. 198, ss. 8, 9.)

Editor's Note. — The above section was formerly § 143-224. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. The 1977 act also amended this section by substituting "chairman" for "Executive Director" near the beginning of subsection (d).

The 1975, 2nd Sess., amendment substituted "Attorney General" for "Secretary of State" near the middle of the second sentence of subsection (c).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-462. Treasurer of the Authority. — The Authority shall select its own treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon shall

be paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10; 1959, c. 523, s. 8; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-225. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-463. Deposit and disbursement of funds. — All Authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. Any and all revenues and earnings received by the Authority from its operations shall be handled as directed in section 13, Chapter 820 of the Session Laws of 1949. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-226. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-464. Annual audit; copies to be furnished. — At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor, the Department of Administration and the Attorney General. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2; 1957, c. 269, s. 1; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-227. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-465. Purchase of supplies, material and equipment. — All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. (1953, c. 191, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-227.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-466. Liberal construction of Article. — It is intended that the provisions of this Article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment

thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-228. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-467. Warehouses, wharves, etc., on property abutting navigable waters. — The powers, authority and jurisdiction granted to the North Carolina State Ports Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1955, c. 727; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-228.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§§ 143B-468 to 143B-472: Reserved for future codification purposes.

Article 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-473. Department of Crime Control and Public Safety—creation.— There is hereby created and constituted a department to be known as the "Department of Crime Control and Public Safety," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 70, s. 1.)

Editor's Note. — Session Laws 1977, c. 70, s. 37, makes the act effective April 1, 1977.

For transition provisions applicable to the organization of the Department of Crime Control and Public Safety, see Session Laws 1977, c. 70, ss. 35, 36.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-474. Department of Crime Control and Public Safety — duties. — It shall be the duty of the Department of Crime Control and Public Safety to provide assigned law-enforcement and emergency services to protect the public against crime and against natural and man-made disasters; to plan and direct a coordinated effort by the law-enforcement agencies of State government and to insure maximum cooperation between State and local law-enforcement agencies in the fight against crime; to prepare annually a State plan for the State's criminal justice system; to serve as the State's chief coordinating agency to control crime, to insure the safety of the public and to insure an effective and efficient State criminal justice system; to have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct;

to regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State; to provide national guard troops trained by the State to federal standards; to insure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life, and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes; and to develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems. (1977, c. 70, s. 1.)

§ 143B-475. Department of Crime Control and Public Safety — functions. — (a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans Affairs;
(2) Civil Preparedness, Department of Military and Veterans Affairs;
(3) State Civil Air Patrol, Department of Military and Veterans Affairs;
(4) State Highway Patrol, Department of Transportation;
(5) State Board of Alcoholic Control Enforcement Division, Department of Commerce;
(6) Governor's Crime Commission, Department of Natural and Economic Resources;
(7) Crime Control Division, Department of Natural and Economic Resources;
(8) Criminal Justice Information System Board, Department of Natural and Economic Resources; and
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.

(b) The Department shall perform such other functions as may be assigned by the Governor.

(c) All such functions, powers, duties and obligations heretofore vested in any existing agency in Article 5 of Chapter 143B of the General Statutes are hereby transferred to and vested in the Department of Crime Control and Public Safety, except as otherwise provided by the Executive Organization Act of 1973, as amended. (1977, c. 70, s. 1.)

Cross Reference. — As to transfer of the Governor's Crime Commission to the Department of Crime Control and Public Safety, see § 143A-294.

§ 143B-476. Department of Crime Control and Public Safety — head. — (a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars,

insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized. (1977, c. 70, s. 1.)

Part 2. Crime Control Division.

§ 143B-477. Crime Control Division of the Department of Crime Control and Public Safety. — (a) There is hereby established, within the Department of Crime Control and Public Safety, the Crime Control Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Crime Control Division shall provide clerical and professional services required by the Governor's Crime Commission and shall administer the State Law Enforcement Assistance Program and such additional related programs as may be established by or assigned to the Commission. It shall serve as the single State planning agency for purposes of the Crime Control Act of 1976 (Public Laws 94-503). Administrative responsibilities shall include, but are not limited to, the following:

(1) Compiling data, establishing needs and setting priorities for funding and policy recommendations for the Commission;
(2) Preparing and revising statewide plans for adoption by the Commission which are designed to improve the administration of criminal justice and to reduce crime in North Carolina;
(3) Advising State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;
(4) Stimulating and seeking financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;
(5) Assisting State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning and crime reduction;
(6) Encouraging and assisting coordination at the federal, State, and local government levels in the preparation and implementation of criminal justice administration improvements and crime reduction plans;
(7) Applying for, receiving, disbursing, and auditing the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;
(8) Entering into, monitoring, and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;
(9) Providing technical assistance to State and local law-enforcement agencies in developing programs for improvement of the law-enforcement and criminal justice system; and
(10) Taking such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(c) The Crime Control Division shall also provide professional and clerical staff services to the adjunct committees of the Governor's Crime Commission established in G.S. 143B-480. (1977, c. 11, s. 4.)

Editor's Note. — The above section is § 143B-340 as enacted by Session Laws 1977, c. 11, s. 4, effective March 1, 1977. It has been recodified in this Article because of the establishment of the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

Part 3. Governor's Crime Commission.

§ 143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc. — (a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 29 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, and the Secretary of the Department of Correction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), four citizens (two with knowledge of juvenile delinquency and the public school system, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. One member of the North Carolina House of Representatives and one member of the North Carolina State Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Youth Services of the Department of Human Resources, the Administrator for Juvenile Services of the Administrative Office of the Courts, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Paroles, the Director of the Division of Youth Services and the Administrator for Juvenile Services of the Administrative Office of the Courts. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the four citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list

must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The member of the House of Representatives shall be appointed by the Speaker of the House of Representatives and the member of the Senate shall be appointed by the Lieutenant Governor. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be diqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business. (1965, c. 663; 1977, c. 11, s. 1.)

Cross Reference. — As to transfer of the Crime Control Division from the Department of Natural and Economic Resources to the Department of Crime Control and Public Safety, see § 143A-295.

Editor's Note. — This section is § 143B-337 as amended by Session Laws 1977, c. 11, s. 1, effective March 1, 1977. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

For transition provisions applicable to the transfer, see Session Laws 1977, c. 11, s. 5.

Session Laws 1977, c. 11, s. 5 provides: "This act shall become effective on March 1, 1977. Prior to the creation of the Department of Crime Control and Public Safety, the Governor's Crime Commission shall be a part of the Department of Natural and Economic Resources; and the professional and clerical responsibilities vested by this act in the Division of Crime Control of the Department of Crime Control and Public Safety shall continue to be vested in the Law and Order Section of the Department of Natural and Economic Resources. Until such time as the Department of Crime Control and Public Safety is created, all references in this act to the Department of Crime Control and Public Safety shall be deemed to refer to the Department of Natural and Economic Resources."

Session Laws 1977, c. 11, s. 7, contains a severability clause.

§ 143B-479. Governor's Crime Commission — powers and duties. — (a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice system.

(2) To develop a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:

a. To reduce crime,

b. To protect individual rights,

c. To achieve justice,

d. To increase efficiency in the criminal justice system,

e. To promote public safety,

f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and

g. To increase professional skills of criminal justice officers.

(3) To assist and participate with the State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice;

(4) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;

(5) To encourage public support and respect for the criminal justice system in North Carolina;

(6) To seek ways to continue to make North Carolina a safe and secure State for its citizens;

(7) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(8) To set objectives and priorities for the improvement of law enforcement and criminal justice throughout the State;

(9) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;

(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-339; and

(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(b) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for criminal justice purposes which may be made available for the State by the federal government. The Governor's Crime Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government.

All decisions and grants heretofore made by the Governor's Law and Order Commission shall remain in full force and effect unless and until repealed or superseded by action of the Governor's Crime Commission established herein. The present Governor's Commission on Law and Order is terminated on

February 28, 1977, and its powers, duties, and responsibilities vest in the Governor's Crime Commission effective March 1, 1977. All directives of the Governor's Crime Commission shall be administered by the Director, Crime Control Division of the Department of Crime Control and Public Safety. (1975, c. 663; 1977, c. 11, s. 2.)

Editor's Note. — The above section is § 143B-338 as rewritten by Session Laws 1977, c. 11, s. 2, effective March 1, 1977. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

§ 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties. — (a) There are hereby created by way of extension and not limitation, the following adjunct committees of the Governor's Crime Commission: the Crime Prevention and Public Information Committee, the Judicial Planning Committee, the Juvenile Justice Planning Committee, the Law Enforcement Planning Committee, the Corrections Planning Committee, and the Juvenile Code Revision Committee.

(b) The composition of the adjunct committees shall be as designated by the Governor by executive order, except for the Judicial Planning Committee, the composition of which shall be designated by the Supreme Court. The Governor's appointees shall serve two-year terms beginning March 1, of each odd-numbered year, and members of the Judicial Planning Committee shall serve at the pleasure of the Supreme Court.

(c) The adjunct committees created herein shall report directly to the Governor's Crime Commission and shall have the following powers and duties:

(1) The Crime Prevention and Public Information Committee shall advise the Governor's Crime Commission on the most appropriate and effective methods to foster public awareness of the role of individual citizens, businesses, and community organizations in the prevention and reporting of crime and to foster public awareness of the ability and responsibility of individuals to have an impact on the crime problem; it shall also advise the Governor's Crime Commission on the most appropriate and effective methods of preventing crime, on mobilizing the citizenry through "Community Watch" and other related programs to prevent crime, and on educating the public about the nature of particular crimes and the most effective methods of preventing them.

(2) The Law Enforcement Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to law enforcement, including detention; shall participate in the development of the law-enforcement component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of law-enforcement services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of law-enforcement services.

(3) The Judicial Planning Committee (which shall be appointed by the Supreme Court) shall establish court improvement priorities, define court improvement programs and projects, and develop an annual judicial plan in accordance with the Crime Control Act of 1976 (Public Law 94-503); shall advise the Governor's Crime Commission on all matters which are referred to it relevant to the courts; shall consider and recommend priorities for the improvement of judicial services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of judicial services.

(4) The Corrections Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to corrections; shall participate in the development of the adult corrections component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of correction services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of corrections.

(5) The Juvenile Justice Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to juvenile justice; shall participate in the development of the juvenile justice component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of juvenile justice services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of juvenile justice.

(6) The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the district court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct committee shall terminate on February 28, 1979.

(d) The Governor shall have the power to remove any member of any adjunct committee from the Committee for misfeasance, malfeasance or nonfeasance. Each Committee shall meet at the call of the chairman or upon written request of one third of its membership. A majority of a committee shall constitute a quorum for the transaction of business.

(e) The actions and recommendations of each adjunct committee shall be subject to the final approval of the Governor's Crime Commission. (1975, c. 663; 1977, c. 11, s. 3.)

Editor's Note. — The above section is § 143B-339 as rewritten by Session Laws 1977, c. 11, s. 3, effective March 1, 1977. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

Part 4. State Fire Commission.

§ 143B-481. State Fire Commission created — membership. — There is hereby created the State Fire Commission of the Department of Crime Control and Public Safety which shall be composed of nine voting members consisting of the following: the Executive Secretary of the North Carolina State Firemen's Association, the Legislative Chairman of the North Carolina State Firemen's Association, the Executive Secretary of the North Carolina Association of Fire Chiefs, the Director of Fire and Rescue Services Training of the Department of Insurance, the Director of Fire Services Training of the Department of Community Colleges, the Director of the North Carolina Fire College and Pump

School, one mayor or other elected official of a municipality to be appointed by the Governor after consultation with the President of the North Carolina League of Municipalities, one county commissioner to be appointed by the Governor after consultation with the President of the North Carolina Association of County Commissioners, and one member to be appointed by the Governor from the public at large, not employed by government and not directly involved in fire fighting.

The following State officials shall serve by virtue of their office as nonvoting members of the State Fire Commission: the Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General and the Secretary of Crime Control and Public Safety, or their respective designees.

Of the members initially appointed by the Governor, the representative of the public at large shall serve for three years, the representative of the League of Municipalities shall serve for two years and the representative of the Association of County Commissioners shall serve for one year. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Governor may make appointments to fill the unexpired portions of the appointed members of any term vacated by reason of the death, resignation or removal from office. In making such appointment he shall preserve the composition of the Commission required above. Vacancies caused by reason of the death or resignation of ex officio members shall be filled by their respective successors in office.

Members of the State Fire Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be. (1977, c. 1064, s. 1.)

Editor's Note. — Session Laws 1977, c. 1064, s. 4, makes the act effective July 1, 1977.

Session Laws 1977, c. 1064, s. 2, contains a severability clause.

§ 143B-482. State Fire Commission — powers and duties. — The State Fire Commission shall have the following powers and duties:

(1) To formally adopt a State Fire Education and Training Plan and a State Master Plan for Fire Prevention and Control;

(2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina;

(3) To increase the professional skills of fire protection and fire-fighting personnel;

(4) To encourage public support for fire prevention and control;

(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce;

(7) To make studies and recommendations for the improvement of fire prevention and control in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and for effective fire prevention and control education;

(8) To set objectives and priorities for the improvement of fire prevention and control throughout the State;

(9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and for improving fire

prevention and control administration and planning within the State of North Carolina;

(10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, planning and administration;

(11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control administrative improvements and crime reduction plans;

(12) To apply for, receive, disburse and audit the use of funds received for [from] any public and private agencies and instrumentalities for fire prevention and control, its administration and plans therefor;

(13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(14) To provide technical assistance to State and local fire prevention and control agencies in developing programs for improvement of the fire prevention and control system; and

(15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities. (1977, c. 1064, s. 1.)

§ 143B-483. State Fire Commission — organization; rules and regulations; meeting. — (a) First Meeting; Organization. — Within 30 days after its appointment, the State Fire Commission shall meet on call of the Secretary of Crime Control and Public Safety and shall elect from its voting members a chairman and vice-chairman.

(b) Rules and Regulations. — The State Fire Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for grants-in-aid for fire protection and fire-fighting purposes which may be made available to the State by the federal government. The State Fire Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce. In respect to such grants, the State Fire Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control agencies.

All actions taken by the State Fire Commission in the performance of its duties shall be implemented and administered by the Department of Crime Control and Public Safety.

(c) Meetings. — The State Fire Commission shall meet quarterly. Five members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1.)

§ 143B-484. State Fire Commission — staff. — There shall be an executive director (State Fire Administrator) selected by the State Fire Commission, who shall be appointed by the Secretary of Crime Control and Public Safety, with direct responsibilities to the Commission.

Personnel of the Department of Crime Control and Public Safety shall serve as staff to the State Fire Commission. The Department of Crime Control and Public Safety shall provide the clerical and professional services required by the State Fire Commission and, at the direction of the State Fire Commission, shall develop and administer the State Master Plan for Fire Prevention and Control and the State Fire Education and Training Plan and such additional related

programs as may be established by or assigned to the State Fire Commission. (1977, c. 1064, s. 1.)

§ 143B-485. State Fire Commission — fiscal affairs. — All funds for the operation of the State Fire Commission and its staff shall be appropriated to the Department of Crime Control and Public Safety. All such funds shall be held in a separate or special account on the books of the Department of Crime Control and Public Safety with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as expenditures of any other Department of Crime Control and Public Safety funds. The Department of Crime Control and Public Safety may hire such additional personnel as may be necessary to handle the work of the State Fire Commission, within the limits of funds appropriated to it by the State and made available to it by the federal government. (1957, c. 269, s. 1; 1977, c. 1064, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in this section as enacted by Session Laws 1977, c. 1064. See § 143-344(a).

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

Article 2.

Dispositions.

Sec.

146-6.1. [Repealed.]

146-8. Disposition of mineral deposits in State lands under water.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 6.

Acquisitions.

146-22.1. Acquisition of property.

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Dispositions.

146-27. The role of the Department of Administration in sales, leases, and rentals.

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Miscellaneous Provisions.

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Correction of Grants.

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SUBCHAPTER IV. MISCELLANEOUS.

Article 14.

General Provisions.

146-69. Service on State in land actions.

146-70. Institution of land actions by the State.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 2.

Dispositions.

§ 146-6.1: Repealed by Session Laws 1977, c. 366.

§ 146-8. Disposition of mineral deposits in State lands under water. — The State, acting at the request of the Department of Natural Resources and Community Development, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Natural Resources and Community Development, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Natural Resources and Community Development, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall

be used exclusively by the Department of Natural Resources and Community Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; C. S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Conservation and Development" in four places.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in four places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 146-12. Easements in lands covered by water.

Local Modification. — Craven: 1973, c. 1129.

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 6.

Acquisitions.

§ 146-22.1. Acquisition of property. — In order to carry out the duties of the Department of Administration as set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

(13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123. (1969, c. 1091, s. 1; 1973, c. 1284, s. 2.)

Editor's Note. — The 1973 amendment added subdivision (13).

Session Laws 1973, c. 1284, s. 3, provides: "This act shall become effective July 1, 1974, except that the provisions of this act relating to the selection of the initial Commission shall become effective upon ratification, and the entire act shall expire on June 30, 1981." The act was ratified April 12, 1974. Session Laws 1975, c. 452, s. 5, amends Session Laws 1973, c. 1284, s. 3, so as to change the expiration date of the 1973 act from June 30, 1981, to June 30, 1983.

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (13) are set out.

§ 146-23.1. Buildings having historic, architectural or cultural significance. — In order to promote the use of buildings having historic, architectural or cultural significance, the Department of Administration shall inform the North Carolina Historical Commission of all geographical areas in the State within which the State is actively seeking to lease space for the accommodation of State agencies. Within 60 days of the receipt of such information, the North Carolina Historical Commission shall identify for the Department of Administration all buildings within such geographical areas that (i) are known to be of historic, architectural or cultural significance (including but not limited to buildings listed or eligible to be listed on the National Register established pursuant to 16 U.S.C. 470(a)), and (ii) which may be suitable, whether or not in need of repair, alteration or addition, for acquisition or lease to meet the public building and space needs of State agencies. In addition, the North Carolina Historical Commission shall furnish the Department of Administration such additional information on the physical condition, usable space, and the

nature and approximate costs of necessary historic rehabilitation as the department may request in order for the department to determine whether the acquisition or lease of space in such buildings is feasible and prudent.

In acquiring lease space pursuant to G.S. 146-25.1, the Department of Administration shall give preference to lease proposals involving buildings identified by the North Carolina Historical Commission as having historic, architectural or cultural significance. Provided, however, that such preference shall be given only when the Department of Administration, after investigation as provided in this Article, determines that such proposal is feasible, prudent and in the best interest of the State, as compared with available alternatives, such determination to include the State's policy to preserve historic buildings. (1977, c. 998, s. 1.)

§ 146-25.1. Proposals to be secured for leases. — (a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed seven thousand five hundred dollars ($7,500) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors.

(c) The Department of Administration shall present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals. (1973, c. 1448; 1975, c. 523; 1977, c. 485.)

Editor's Note. — The 1975 amendment substituted "five consecutive days" for "three consecutive weeks" and "seven days" for "20 days" in the second sentence of subsection (a).

The 1977 amendment, effective July 1, 1977, rewrote subsection (a), substituted "The Department may negotiate" for "After receipt of the proposals, the agency may then negotiate" at the beginning of subsection (b), substituted "land" for "space" in two places in subsection (b), deleted the former second sentence of subsection (b), which read "The agency shall then present its application to the Department of Administration for the proposed lease as provided by G.S. 146-23; provided, however, that if the lowest rental proposal is not presented, a statement of justification must be submitted to the Department of Administration," and deleted "then investigate as provided by this Article, and must" following "Department of Administration shall" in the first sentence of subsection (c).

Section Is Applicable to Nonbinding Agreements to Lease Made Prior to April 13, 1974; to Leases Which Expire after April 13, 1974, and Must Be Renegotiated; and to "Emergency Situations". — See Opinion of Attorney General to Mr. M.E. White, N.C. Department of Administration, 43 N.C.A.G. 402, (1974).

§ 146-26.1. Relocation assistance. — In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the same authority as is given the

Department of Transportation in Article 13 of Chapter 136 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation."

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals. — Every sale, lease, or rental of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. The Department of Administration may initiate proceedings for sales, leases, and rentals of land owned by the State or by any State agency. (1957, c. 584, s. 6; G. S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2.)

Editor's Note. — The 1977 amendment rewrote the second sentence, which formerly provided: "In no event shall the Department of Administration have authority to initiate any proceeding for the sale, lease, or rental of land heretofore allocated to or used by any State agency."

§ 146-30. Application of net proceeds. — The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G.S. 105-296.1, if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission. Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural Resources and Community Development shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as approved by the Director

of the Budget and the Advisory Budget Commission. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012.)

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, deleted, at the end of the first paragraph, a provision directing the proceeds to be deposited in a capital improvement account to the credit of the State agency at whose request the disposition was approved, to be used for purposes approved by the Director of the Budget and the Advisory Budget Commission. The amendment also added the proviso at the end of the section.

Session Laws 1975, 2nd Sess., c. 983, s. 30, which amended this section, provides: "Nothing in this section shall limit present authorization in G.S. 146-30 for the Wildlife Resources Commission's use of the net proceeds derived from the sale of land or products of land owned or under the supervision and control of the Commission. Also, nothing in the section shall limit the disposition of proceeds of sale under newly enacted section 11 of 1971 Session Laws, Chapter 723 which is specifically exempt from the provisions of G.S. 146-30."

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

The second 1977 amendment added the fourth sentence of the third paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Exchange of Real Property by State Agencies. — Section 146-30 does, as amended, prohibit a State agency from exchanging real property surplus to its needs for other real property more suitable to the agency. Opinion of Attorney General to Mr. Nat H. Robb, Director, Real Property Division, Department of Administration, 46 N.C.A.G. 51 (1976).

ARTICLE 8.

Miscellaneous Provisions.

§ 146-33. State agencies to locate and mark boundaries of lands. — Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Department of Correction for the furnishing, upon such conditions as may be agreed upon from time to time between the State Department of Correction and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G.S., s. 143-145.1; 1959, c. 683, s. 1; 1967, c. 996, s. 13.)

Editor's Note. — This section is set out to correct an error in the replacement volume.

ARTICLE 12.

Correction of Grants.

§ 146-60.1. Further extension of time for registering grants or copies. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of four years from January 1, 1977, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1977, c. 701.)

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-69. Service on State in land actions. — In all actions and special proceedings brought by or against the State or any State agency with respect to State land or any interest therein, service of process upon the Secretary of Administration, with delivery to him of copies for the Attorney General and for the administrative head of each State agency known by the party in whose behalf service is made to have an interest in the land which is the subject of the action or proceeding, shall constitute service upon the State for all purposes. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the middle of the section.

§ 146-70. Institution of land actions by the State. — Every action or special proceeding in behalf of the State or any State agency with respect to State lands or any interest therein, or with respect to land being condemned by the State, shall be brought by the Attorney General in the name of the State, upon the complaint of the Secretary of Administration. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary" for "Director" near the end of the section.

ARTICLE 16.

Form of Conveyances.

§ 146-74. Approval of conveyances.

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 146-78. Validation of conveyances of state-owned lands.

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

ARTICLE 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles.

This section is not affected by the Real Property Marketable Title Act, § 47B-1 et seq. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

This section does not authorize a "taking" of property. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

The presumption created by this section in favor of the State was enacted to avoid undesirable and chaotic consequences which would result if title to the subject land were in limbo. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

The presumption of title in the State lasts only until the rival claimant establishes valid title in himself. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

Defendants must carry the burden, etc. — In suits for land in which the State or a State agency is a party, the burden of proof is on the party seeking to prove title against the State. Taylor v. Johnston, 27 N.C. App. 186, 218 S.E.2d 500, cert. granted, 288 N.C. 734, 220 S.E.2d 622 (1975).

Chapter 147.

State Officers.

Article 3.

The Governor.

Sec.
147-12. Powers and duties of Governor.
147-32. Compensation for surviving spouses of Governors.
147-33. Compensation and expenses of Lieutenant Governor.

Article 4.

Secretary of State.

147-35. Salary of Secretary of State.
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147-45. Distribution of copies of State publications.
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147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc.
147-52. [Transferred.]
147-54. Printing, distribution and sale of the North Carolina Manual.
147-54.1. Division of Publications; duties.
147-54.2. Filing of official appointments.

Article 5.

Auditor.

147-55. Salary of Auditor.
147-58. Duties and authority of State Auditor.
147-62. Assignments of claims against State.

Article 6.

Treasurer.

147-65. Salary of State Treasurer.
147-68. To receive and disburse moneys; to make reports.
147-69. Deposits of State funds in banks regulated.
147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer.
147-75. Deputy to act for Treasurer.
147-86.1. Pool account for local government unemployment compensation.

ARTICLE 3.

The Governor.

§ 147-12. Powers and duties of Governor. — In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-16.2(h), are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148.)

Editor's Note. — The 1973 amendment added subdivision (11).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (11) are set out.

§ 147-17. May employ counsel in cases wherein State is interested.

Editor's Note. — For article entitled, "Student Legal Services at the University of North Carolina at Chapel Hill," see 7 N.C. Cent. L.J. 286 (1976).

§ 147-32. Compensation for surviving spouses of Governors. — All surviving spouses of Governors of the State of North Carolina, who shall make written request therefor to the Director of the Budget, shall be paid the sum

of three thousand dollars ($3,000) per annum, in equal monthly installments, out of the State treasury upon warrants duly drawn thereon. Provided, that such compensation shall terminate upon the subsequent remarriage of such person. (1937, c. 416; 1947, c. 897, ss. 1, 2; 1955, c. 1314; 1977, c. 554.)

Editor's Note. — The 1977 amendment substituted "surviving spouses" for "widows" near the beginning of the section.

§ 147-33. Compensation and expenses of Lieutenant Governor. — The salary of the Lieutenant Governor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of four thousand dollars ($4,000). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, rewrote the first sentence, which formerly specified the amount of the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

ARTICLE 4.

Secretary of State.

§ 147-35. Salary of Secretary of State. — The salary of the Secretary of State shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 14; 1977, c. 802, s. 42.7.)

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, increased the salary from $31,000 to $32,544.

The 1977 amendment, effective July 1, 1977, rewrote the section, which formerly specified the amount of the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-36. Duties of Secretary of State. — It is the duty of the Secretary of State:

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1.)

Editor's Note. — The 1973 amendment added subdivision (14).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (14) are set out.

§ 147-45. Distribution of copies of State publications. — The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and

to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
Public Education, Department of	1	0
Superintendent of Public Instruction	3	1
Controller	1	0
Division of Community Colleges	3	1
Regional Service Centers	1 ea.	0
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Natural Resources and Community Development, Department of	1	0
Division of Environmental Management	2	0
Board of Natural Resources and Community Development	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health and Mental Retardation Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control, State Board of	2	0
Banking Commission	2	0

Agency or Institution	Session Laws	Assembly Journals
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Commission of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant-at-Arms — House	1	1
Sergeant-at-Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	25	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University North Carolina System Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1

Agency or Institution	Session Laws	Assembly Journals
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barbara Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0

Agency or Institution	Session Laws	Assembly Journals
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4.)

Editor's Note. —

The sixth 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Director of Probation," "Department of Correction" for "Commissioner of Paroles," "Department of Natural and Economic Resources" for "Department of Conservation and Development" and "Soil and Water Conservation Commission" for "State Soil and Water Conservation Committee." The sixth amendatory act directed, in s. 38, that "State Soil Conservation Commission" be substituted for "State Soil and Water Conservation Committee" throughout the General Statutes. Section 34 (§ 143B-294) of the sixth 1973 act, however, creates the Soil and Water Conservation Commission, and that title has been used in this section.

The first 1975 amendment corrected an error by substituting "Barber Scotia" for "Barbara Scotia" in the table of schools and hospitals.

The second 1975 amendment, effective July 1, 1975, substituted "Department of Administration" for "Division of Purchase and Contract" and "Division of Property Control."

The 1975, 2nd Sess., amendment, effective July 1, 1976, increased the number of copies of the Appellate Reports to be furnished to North Carolina Central University and inserted the provision as to Campbell College.

The first 1977 amendment rewrote this section.

The second 1977 amendment, effective July 1, 1977, substituted "Mental Health and Mental Retardation Services" for "Mental Health Services."

The third 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau." See § 143-344(a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 147-48. Sale of Laws and Journals. — Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding cost plus ten percent (10%). All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4; 1955, c. 978, s. 2; 1967, c. 691, s. 55; 1977, c. 802, s. 50.30.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, deleted the former second sentence, which authorized the Secretary to allow a discount to licensed booksellers.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc. — Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raleigh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Library of Congress	2 copies;
Department of Cultural Resources	5 copies;
Western Carolina University	2 copies;
Appalachian State University	2 copies;
University of North Carolina at Wilmington	2 copies;
North Carolina Agricultural and Technical State University	2 copies;
Legislative Library	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. The provisions in this section shall not be interpreted to include any of the appellate division reports or advance sheets distributed by the Administrative Office of the Courts. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 476, s. 84; c. 598; c. 731, s. 2; c. 776; 1977, c. 377.)

Editor's Note. —
The 1977 amendment added the last sentence of the section.

Distribution of S.B.I. Investigative "Bulletin". — G.S. 147-50 does not require the distribution of the S.B.I. Investigative "Bulletin" because information contained in it is not of public record, but instead, is information used by law-enforcement officers to collect and compile evidence for the trial of cases. Opinion of Attorney General to Mr. Charles Dunn, 45 N.C.A.G. 92 (1975).

§ 147-52: Transferred to § 7A-14 by Session Laws 1975, c. 328.

§ 147-54. Printing, distribution and sale of the North Carolina Manual. — The Secretary of State shall have printed biennially for distribution and sale, five thousand (5,000) copies of the North Carolina Manual, and shall make

distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	2 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.
Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5

NORTH CAROLINA EDUCATIONAL INSTITUTIONS:

University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Library	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts	2
Institute of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Univesities	
Duke University Library	6
Wake Forest University	6
Campbell College Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.

COUNTY GOVERNMENT:

Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.

FEDERAL GOVERNMENT:

President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3

Resident Judges of the Federal Judiciary
and United States Attorneys in North Carolina ..... 1 ea.
Secretaries of State of the United States
and Territories ..... 1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378.)

Editor's Note. —
The 1977 amendment rewrote this section.

§ 147-54.1. Division of Publications; duties. — The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the Director of Publications. This Division shall publish the North Carolina Manual, Directory, Index of Local Legislation and such other publications as may be useful to the members and committees of the General Assembly and other officials of the State and of the various counties and cities. The Secretary may sell these publications at such prices as he deems reasonable; the proceeds of sale shall be paid into the State treasury.

The Division shall also perform all such other duties as may be assigned by the Secretary of State. (1915, c. 202, ss. 1, 2; C. S., ss. 6147, 6148; 1939, c. 316; 1971, c. 685, s. 3; 1977, c. 802, s. 50.31.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, added the third sentence of the first paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-54.2. Filing of official appointments. — All appointments to any State board, agency, commission, council or authority made on or after June 1, 1974, shall be filed in the office of the Secretary of State of North Carolina. All appointments which are required by this section to be filed shall contain the date of the appointment, the legal authority for the appointment, and the date on which such appointment expires.

Appointments made pursuant to this act between January 1, 1973, and June 1, 1974, shall be filed within 10 days of date of appointment or ratification, whichever occurs last. (1973, c. 1379, s. 2.)

Editor's Note. — Session Laws 1973, c. 1379, which added this section, was ratified April 12, 1974.

ARTICLE 5.

Auditor.

§ 147-55. Salary of Auditor. — The salary of the State Auditor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess., 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949,

c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 15; 1977, c. 802, s. 42.8.)

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, increased the salary from $31,000 to $32,544.

The 1977 amendment, effective July 1, 1977, rewrote this section, which formerly specified the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-58. Duties and authority of State Auditor. — The duties and authority of the State Auditor shall be as follows:

(1) The State Auditor shall except as provided in G.S. 143-25 be independent of any fiscal control exercised by the Director of the Budget or the Department of Administration, and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the duties and responsibilities of his office.

(9) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions or recommendations he deems desirable concerning any aspect of such agency's activities and operations. He shall, from time to time as he deems desirable, make review concerning economy, and efficiency of agencies operation and program effectiveness and file reports of said operations review with the agency head, the Governor and the Advisory Budget Commission.

(17) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various departments, institutions, commissions, boards and agencies which are supported partially or entirely from State funds. Such examinations would be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient or otherwise inadequate, he shall prescribe and supervise the installation of such changes, as, in his judgment, appear necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful financial statements and reports. In all cases in which major changes in the accounting systems are made, he will be responsible for seeing that the new system is designed to accumulate information required for the preparation of budget reports and other financial reports required by the Department of Administration. In instances in which departments, institutions, boards, commissions and agencies feel it desirable to revise or alter existing accounting systems, said agencies or institutions shall request the Auditor to make a survey of their systems for the purpose of seeing if such a change is desirable, including the advisability of purchasing or renting accounting equipment. Requisitions for the purchase of accounting equipment or contracts for the rental of accounting equipment for any State department, institution, or agency shall be approved by the Auditor.

(20) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited in the General Fund as nontax revenue.

(21) Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of preaudit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Department of Administration. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Department of Administration, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Department of Administration. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Department of Administration the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Department of Administration under the provisions of this section.

(23) Repealed by Session Laws 1977, c. 1029, s. 1.

(24) Upon request of the Council of State, the State Auditor shall conduct an audit of the financial records of an outdoor historical drama corporation or trust, specified in G.S. 143-204.8(c) which has applied for or received an allotment under G.S. 143-204.8(a) for the corporation's or trust's fiscal year preceding the allotment and the fiscal year for which the allotment is made. The State Auditor shall report the findings of these audits to the Council of State and the General Assembly. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 269, s. 1; c. 390; 1969, c. 458, s. 1; 1973, c. 507, s. 5; c. 617, s. 3; c. 1211; c. 1415; 1975, c. 879, s. 46; 1977, c. 996, s. 2; c. 1029, s. 1.)

Editor's Note. —

The third 1973 amendment rewrote the first sentence of subdivision (20), which formerly listed a number of specific agencies and further provided for collection of costs from "any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund."

The fourth 1973 amendment added the second sentence to subdivision (9).

The 1975 amendment, effective July 1, 1975, deleted "the Budget Division of" preceding "the Department of Administration" in the fourth sentence of subdivision (17).

The first 1977 amendment, effective July 1, 1977, added subdivision (24).

The second 1977 amendment repealed subdivision (23), which read: "It shall be the duty of the State Auditor to make an annual audit of the accounts of the National Driving Center Foundation, Incorporated, and make a report thereof to the General Assembly."

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in subdivision (1) and throughout subdivision (21). See § 143-344(a).

A provision similar to subdivision (23) of this section was enacted by Session Laws 1973, c. 1463, effective July 1, 1974.

As the other subdivisions were not changed by the amendments, they are not set out.

§ 147-62. Assignments of claims against State. — All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders

or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88.)

Editor's Note. —

The 1977 amendment inserted "prepaid legal services" in the first proviso.

Employee contributions to charitable organizations may not be deducted from the University payroll at the request of the employee for payment to such charitable organization by the University. Opinion of Attorney General to Mr. Clairborne S. Jones, 44 N.C.A.G. 264 (1975).

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer. — The salary of the State Treasurer shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 16; 1977, c. 802, s. 42.9.)

Editor's Note. —

The 1975, 2nd Sess., amendment, effective July 1, 1976, increased the salary from $31,000 to $32,544.

The 1977 amendment, effective July 1, 1977, rewrote this section, which formerly specified the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-68. To receive and disburse moneys; to make reports.

(e) The State Treasurer shall except as provided in G.S. 143-25 be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C. S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in subsection (e). See § 143-344(a).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 147-69. Deposits of State funds in banks regulated. — Banks having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing his signature to warrants, checks or any other instrument he is required by law to sign. No bank shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars ($1,000), and for each check for an amount in excess of one thousand dollars ($1,000), such banks may charge not over twenty cents (20¢) plus one tenth of one percent ($^1/_{10}$ of 1%) of the amount of such check in excess of one thousand dollars ($1,000). The Commissioner of Banks and the bank examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C. S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1.)

Editor's Note. —
The 1977 amendment added the present fourth sentence.

§ 147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer. — It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State at any other time, to carefully analyze the amount of cash in the general fund and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State. Upon the completion of this analysis the State Treasurer shall determine when in his opinion, the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of State, are hereby authorized to invest such excess funds:

(1) In bonds, notes, certificates of indebtedness and bills of the United States of America or in obligations which are fully guaranteed by the United States of America; or

(2) In bonds, notes and other obligations of the Federal Intermediate Credit

Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks; or

(3) In bonds and notes of the State of North Carolina; or

(4) In certificates of deposit issued by banks or official depositories within the State of North Carolina, yielding a return at rates not less than those available on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturities; or

(5) In savings certificates, investment certificates, shares of or deposits in any savings and loan association organized under the laws of this State and savings certificates, investment certificates, shares of or deposits in any federal savings and loan association having its principal office in this State, to the extent that the investment in such certificates, shares or deposits is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the State to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes, so long as those certificates, shares or deposits yield a return at rates not less than those available on United States treasury bonds, notes, certificates of indebtedness, or bills of comparable maturities.

Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks or savings and loan associations are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by banks or official depositories within the State of North Carolina at the maximum rate that banks are permitted to pay by federal or State statutes or regulations, or such excess funds may be invested in savings certificates, investment certificates, shares of or deposits in savings and loan associations in the State of North Carolina at the maximum rate that savings and loan associations are permitted to pay by federal or State statutes or regulations. The said funds shall be invested so that in the judgment of the Governor and the State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund; provided, however, that on and after July 1, 1961, all interest accruing on the monthly balance of the highway fund shall be paid to the State Highway Fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1; 1969, c. 125; 1975, c. 482.)

Editor's Note. — The 1975 amendment deleted "of the State" following "in the general fund" near the middle of the first sentence of the first paragraph, formed the present second sentence of that paragraph by substituting "Upon the completion of this analysis the State Treasurer shall determine when in his opinion" for "and to determine in his opinion when the

cash," added subdivision (5) near the middle of that paragraph, inserted "or savings and loan associations" near the beginning of the first sentence following the subdivisions, added the language beginning "or such excess funds" at the end of that sentence, substituted "be invested so that" for "be so invested that" near the beginning of the next-to-last sentence of that paragraph and deleted "of the State" following "highway fund" near the end of the last sentence of that paragraph.

§ 147-75. Deputy to act for Treasurer. — The Treasurer may authorize a deputy to perform any duties pertaining to the office. The Treasurer may authorize a deputy to affix the Treasurer's signature to any check, warrant or any other instrument the Treasurer is required to sign by use of the facsimile signature machine or device during the Treasurer's absence or disability. The Treasurer shall be responsible for the conduct of his deputies. (1868-9, c. 270, s. 76; Code, s. 3358; Rev., s. 5377; C. S., s. 7690; 1977, c. 401, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 147-86.1. Pool account for local government unemployment compensation. — (a) The State Treasurer is authorized to establish a pool account, in accordance with rules and regulations of the Employment Security Commission, in cooperation with any one or more units of local government, for the purpose of reimbursing the Employment Security Commission for unemployment benefits paid by the Commission and chargeable to each local unit of government participating in the pool account. In the pool account established pursuant to this section, the funds contributed by a unit of local government shall remain the funds of the particular unit, and interest or other investment income earned by the pool account shall be prorated and credited to the various contributing local units on the basis of the amounts thereof contributed, figured according to an average periodic balance or some other sound accounting principle.

(b) The State Treasurer shall pay to the Employment Security Commission, within 25 days from receipt of a list thereof, all unemployment benefits charged by the Commission to each unit of local government participating in the pool account from the funds in the pool account belonging to each such unit, to the extent that said funds are sufficient to do so.

(c) Notwithstanding the participation by a unit of local government in the pool account authorized by this section, such unit shall remain liable to the Employment Security Commission for any benefits duly charged by the Commission to the unit which are not paid by the State Treasurer from funds in the pool account belonging to the unit. Notwithstanding its participation in the pool account, each unit of local government shall continue to maintain an individual account with the Employment Security Commission.

(d) The Advisory Budget Commission shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account. (1977, c. 1124.)

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.
148-1. [Repealed.]
148-2. Prison moneys and earnings.
148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.
148-5. Secretary to manage prison property.
148-8, 148-8.1. [Transferred.]
148-10.1. Employment of clinical chaplains for inmates.

Article 2.

Prison Regulations.

148-11. Authority to make regulations.
148-12. Diagnostic and classification programs.
148-18. Wages, allowances and loans.
148-19. Health services.
148-20. Corporal punishment of prisoners prohibited.
148-22. Treatment programs.
148-24. Religious services.
148-25. Secretary to investigate death of convicts.

Article 3.

Labor of Prisoners.

148-26. State policy on employment of prisoners.
148-26.1. Definitions.
148-26.2. Area inmate labor commissions.
148-26.3. State Inmate Labor Commission.
148-26.4. Compensation of members of inmate labor commissions.
148-26.5. Pay and time allowances for work.
148-28. Sentencing prisoners to Central Prison; youthful offenders.
148-30. Sentencing to public roads.
148-32. [Repealed.]
148-32.1. Local confinement, costs, alternate facilities, parole, work release.
148-33. Prison labor furnished other State agencies.
148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.
148-33.2. Restitution by prisoners with work-release privileges.
148-36. Secretary of Correction to control classification and operation of prison facilities.
148-37. Additional facilities authorized; contractual arrangements.
148-41. Recapture of escaping prisoners; reward.
148-42. Indeterminate sentences.
Sec.
148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.
148-46. Degree of protection against violence allowed.
148-48. Parole powers of Parole Commission unaffected.

Article 3A.

Facilities and Programs for Youthful Offenders.

148-49.1 to 148-49.9. [Repealed.]

Article 3B.

Facilities and Programs for Youthful Offenders.

148-49.10. Purposes of Article.
148-49.11. Definitions.
148-49.12. Treatment of youthful offenders.
148-49.13. Classification studies.
148-49.14. Sentencing committed youthful offenders.
148-49.15. Parole of committed youthful offenders.
148-49.16. Supervision of paroled youthful offenders and revocation of such parole.

Article 4.

Paroles.

148-52. [Repealed.]
148-52.1. Prohibited political activities of member of Parole Commission or employee of Department.
148-53. Investigators and investigations of cases of prisoners.
148-54. Parole supervisors provided for; duties.
148-55. [Repealed.]
148-56. Assistance in supervision of parolees and preparation of case histories.
148-57. Rules and regulations for parole consideration.
148-57.1. Restitution as a condition of parole.
148-58. Time of eligibility of prisoners to have cases considered.
148-58.1. Credit for time spent on parole; effect of discharge; relief from further reports; permission to leave State or county.
148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.
148-60. [Repealed.]

Sec.
148-60.1. Allowances for paroled prisoner.
148-60.2. Administrative procedures for parole.
148-60.3. Parole for misdemeanants.
148-61. [Repealed.]
148-61.1. Revocation of parole by Commission; conditional or temporary revocation.
148-62. Discretionary revocation of parole upon conviction of crime.
148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings.
148-64. Cooperation of prison and parole officials and employees.

Article 4A.

Out-of-State Parolee Supervision.

148-65.1A. Interstate parole and probation hearing procedures.
148-65.3. North Carolina sentence to be served in another jurisdiction.

Article 5.

Farming Out Convicts.

148-70. Management and care of inmates; prison industries; disposition of products of inmate labor.

Article 7.

Records, Statistics, Research and Planning.

148-74. Records Section.
148-78. Reports.

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-83. Form, requisites and contents of petition; nature of hearing.
Sec.
148-84. Evidence; action by Parole Commission; payment and amount of compensation.

Article 10.

Interstate Agreement on Detainers.

148-89 to 148-95. [Transferred.]
148-96 to 148-100. [Reserved.]

Article 11.

Inmate Grievance Commission.

148-101. Commission established; appointment and terms of members; chairman, vacancies; compensation.
148-102. Appointment and salary of Executive Director, hearing examiners and other personnel.
148-103. Removal of members.
148-104. Submission of grievance or complaint.
148-105. Preliminary review.
148-106. Hearing and disposition by Commission; review by Secretary of Correction.
148-107. Hearing by examiner; review; disposition.
148-108. Access to documentary evidence; subpoenas; oaths and affirmations.
148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation.
148-110. Record of complaints.
148-111. Conduct of hearing at institutions.
148-112. Rules and regulations.
148-113. Judicial review.

ARTICLE 1.

Organization and Management.

§ 148-1: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

Cross Reference. — For present provisions as to Department of Correction, see § 143B-260 et seq.

§ 148-2. Prison moneys and earnings. — (a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Department of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Commission of Correction" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement. — The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or
(2) Secure a suitable residence for use when released on parole or upon discharge; or
(3) Obtain medical services not otherwise available; or
(4) Participate in a training program in the community; or
(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not a natural parent, has acted in the place of a parent), brother, or sister; or
(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement

designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15; 1973, c. 902; c. 1262, s. 10; 1977, c. 704, s. 5.)

Editor's Note. —

The first 1973 amendment added subdivision (6) to the second paragraph.

The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner" throughout the section.

The 1977 amendment, effective July 1, 1977, inserted "pre-release and after-care programs as may be provided for and administered by the Secretary of Correction" in subdivision (6) of the second paragraph.

Evidence Sufficient to Support Finding of Escape. — The testimony of the State's witness, a sergeant with the North Carolina Department of Correction assigned to the prison camp in which defendant was confined, that on the day in question defendant "was given permission to leave the unit on a Community Volunteer Leave" was sufficient to support the jury's finding, and it was not necessary, as defendant contends, that the State present evidence to show that the Secretary of Correction, after making a determination that there was reasonable cause to believe that defendant would honor his trust, had personally authorized defendant's release to participate in the community volunteer program and had personally prescribed the precise period of time during which the defendant was permitted to be absent from the prison unit. State v. Harris, 27 N.C. App. 15, 217 S.E.2d 729, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).

Applied in State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Cited in State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973).

§ 148-5. Secretary to manage prison property. — The Secretary of Correction shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this Chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

§ 148-8: Transferred to § 66-58(b)(15) by Session Laws 1975, c. 730, s. 2, effective October 1, 1975.

§ 148-8.1: Transferred to § 66-58(b)(16) by Session Laws 1975, c. 730, s. 3, effective October 1, 1975.

§ 148-10.1. Employment of clinical chaplains for inmates. — The Department of Correction is authorized and directed to employ clinical chaplains to provide moral, spiritual and social counselling and ministerial services to inmates in the custody of the Secretary of the Department of Correction. The Department of Correction shall seek to employ a diversity of qualified persons having differing faiths which are to the extent practicable reflective of the professed religious composition of the inmate population. (1977, c. 950, s. 1.)

Editor's Note. — Session Laws 1977, c. 950, s. 4, makes this section effective July 1, 1977.

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to make regulations. — The Secretary shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the Department of Correction. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary" for "Commissioner" and "Department of Correction" for "Commission of Correction."

§ 148-12. Diagnostic and classification programs.

(c) Any prisoner confined in the State prison system while under a sentence of imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50; 1967, c. 996, s. 2; 1973, c. 1446, s. 27.)

Editor's Note. —

The 1973 amendment substituted "of" for "to" following "while under a sentence" near the beginning of subsection (c).

Session Laws 1977, c. 732, s. 6, effective Oct. 1, 1977, provides: "All commitments to the Department of Correction under G.S. 148-49.3 shall be treated as commitments under G.S. 148-12(b)."

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

For article entitled, "Review of the Presentence Diagnostic Study Procedure in North Carolina," see 8 N.C. Cent. L.J. 17 (1976).

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 33, effective July 1, 1978, will repeal subsection (b) of this section.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-18. Wages, allowances and loans. — (a) Prisoners employed in prison enterprises shall be compensated, at rates fixed by the Department of Correction's rules and regulations, for work performed; provided, that no prisoner working for prison enterprises shall be paid more than one dollar ($1.00) per day from funds made available by the Prison Enterprises Fund.

Prisoners employed other than by prison enterprises and those involved in the maintenance and housekeeping of the prison system, shall be compensated at rates fixed by the Department of Correction's rules and regulations; provided, that no prisoner so paid shall receive more than one dollar ($1.00) per day. The source of wages and allowances provided inmates who are not employed by prison enterprises shall be funds provided by the Department of Transportation to the Department of Correction for this purpose.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate

for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Department of Correction. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10; 1975, c. 506, s. 3; c. 716, s. 7.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Commission of Correction" at the end of subsection (c).

The first 1975 amendment, effective July 1, 1975, divided subsection (a) into two paragraphs and rewrote that subsection.

The second 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the end of subsection (a).

Session Laws 1975, c. 682, s. 4, provides: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

§ 148-19. Health services.

(b) Upon request of the Secretary of Correction, the Secretary of Human Resources may detail personnel employed by the Department of Human Resources to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Human Resources, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(d) The Commission for Mental Health and Mental Retardation Services shall prescribe standards for the delivery of mental health services to inmates in the custody of the Department of Correction. The Commission for Mental Health and Mental Retardation Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Human Resources shall designate an agency or agencies within the Department of Human Resources to monitor the implementation of such standards by the Department of Correction. The Secretary of Human Resources shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (b).

The first 1977 amendment, effective July 1, 1977, added subsection (d).

The second 1977 amendment, effective July 1, 1977, substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" in subsection (d).

As the rest of the section was not changed by the amendments, only subsections (b) and (d) are set out.

§ 148-20. Corporal punishment of prisoners prohibited. — It is unlawful for the Secretary of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

§ 148-22. Treatment programs.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies offering needed services including health, mental health, rehabilitative or training services for such inmates of the Department of Correction as the Secretary may deem eligible. These agencies shall be reimbursed from applicable appropriations to the Department of Correction for services rendered at a rate not to exceed that which such agencies normally receive for serving their regular clients.

The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2; 1977, c. 297.)

Editor's Note. — The 1975 amendment added the second paragraph of subsection (b).

The 1977 amendment, effective July 1, 1977, divided the former second paragraph of subsection (b) into the present second and third paragraphs, substituted "services including health, mental health, rehabilitative or training services" for "rehabilitative or training services to provide housing sustenance and supervision" in the first sentence of the present second paragraph, added the second sentence of the present second paragraph, and deleted the former fifth sentence of the former second paragraph, which read "Provided that nothing herein contained shall authorize any such contract with the Division of Mental Health."

As the rest of the section was not changed by the amendments, only subsection (b) is set out.

§ 148-24. Religious services. — The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Secretary of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss.

1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

§ 148-25. Secretary to investigate death of convicts. — The Secretary of Correction, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Secretary may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S., s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner."

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners. — (a) It is declared to be the public policy of this State to provide diversified employment for all able-bodied inmates of the State prison system in work for the public benefit that will reduce the cost of their keep while enabling them to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work by which inmates can develop a skill to better equip themselves to return to society;
(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof;
(3) Repealed by Session Laws 1977, c. 824, s. 2.
(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, and as many medium custody prisoners as are available, fit for road work and can be adequately guarded during such work without reducing security levels at prison units, shall be employed in the maintenance and construction of public roads of the State. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and

regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Natural Resources and Community Development as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the State Division of Youth Development. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Secretary of Natural and Economic Resources" for "Director of the Department of Conservation and Development" in subsection (e).

The first 1975 amendment added subsection (f).

The second 1975 amendment, effective July 1, 1975, reinstated subsection (b), which was repealed by the 1971 amendment, and rewrote that subsection.

The third 1975 amendment added the second paragraph in subsection (a).

The fourth 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" two places in subsection (b) and for "State Department of Transportation and Highway Safety" in the second sentence of subsection (b).

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of subsection (e).

The second 1977 amendment, effective July 1, 1977, added the language beginning "and as many medium" and ending "levels at prison units" in the first sentence of subsection (b) and deleted "as can be used for this purpose" at the end of that sentence.

The third 1977 amendment substituted "by which inmates can develop a skill to better equip themselves to return to society" for "that inmates are qualified to do" at the end of subdivision (a)(1), deleted subdivision (a)(3), which read "The project or service is not one that would normally be performed by private industry or noninmate labor if inmate labor were not available," and added the fourth sentence of subsection (e).

Session Laws 1975, c. 682, s. 1, provides that this act, which amended this section and added §§ 148-26.1 through 148-26.5 shall be known as the "Inmate Labor Act of 1975."

Session Laws 1975, c. 682, s. 4, provides: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsections (c) and (d) were not changed by the amendments, they are not set out.

§ 148-26.1. Definitions. — The following definitions apply:

(1) "Area administrator": The administrator of State prison facilities within one of the areas defined in subdivision (3) of this section.

(2) "Area commission": One of six area inmate labor commissions as defined by G.S. 148-26.2.

(3) "Area command" or "area":

a. This term refers to one of the six geographic areas into which the State is now divided for prison administrative purposes, and is defined only for the purpose of establishing area inmate labor commissions, as provided by G.S. 148-26.2. The definition does not restrict the authority of the Secretary of Correction to change the geographic organization of the Department of Correction.

b. The six geographic areas are as follows:

Western Area. Cherokee, Clay, Graham, Macon, Swain, Jackson, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, McDowell, Polk, Rutherford, Mitchell, Burke, Avery, Watauga, Caldwell, Ashe, Alleghany, Wilkes, Alexander, Catawba and Cleveland Counties.

North Piedmont Area. Surry, Stokes, Rockingham, Caswell, Yadkin, Forsyth, Guilford, Alamance, Davie, Davidson and Randolph Counties.

South Piedmont Area. Iredell, Rowan, Lincoln, Gaston, Mecklenburg, Cabarrus, Stanley and Union Counties.

North Central Area. Person, Orange, Durham, Chatham, Lee, Granville, Wake, Vance, Franklin, Johnston, Warren, Northampton, Halifax, Edgecombe, Nash and Wilson Counties.

South Central Area. Anson, Montgomery, Richmond, Moore, Scotland, Hoke, Harnett, Robeson, Cumberland, Bladen, Columbus, Sampson, Brunswick, Pender and New Hanover Counties.

Eastern Area. Wayne, Duplin, Greene, Lenoir, Jones, Onslow, Pitt, Craven, Carteret, Pamlico, Beaufort, Hyde, Martin, Washington, Tyrrell, Dare, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden and Currituck Counties.

(4) "Department head": The head of one of the principal departments of State government, within the meaning of G.S. 143A-2 or 143B-10, or the chancellor of any of the constituent institutions of the University of North Carolina as defined by G.S. 116-2(3).

(5) "Local public work project" or "local public work": A useful service other than the construction of buildings performed on any land, or any structure thereon, belonging to any municipal or county government, including but not limited to parks, campuses, playgrounds, highways, roads, lakes, forests and waterways.

(6) "Principal department" or "department": One of the principal departments of State government enumerated in G.S. 143A-11 and 143B-6 or one of the constituent institutions of the University of North Carolina defined by G.S. 116-2(4).

(7) "Secretary": The Secretary of Correction.

(8) "State public work project" or "State public work": A useful service other than the construction of buildings performed on any land, or any structure thereon, belonging to any principal department of State government as defined in subdivision (6) above, including, but not limited to, State parks, campuses, playgrounds, highways, roads, lakes, forests and waterways.

(9) "Unit superintendent": The superintendent of any State prison unit or camp other than Central Prison, the Correctional Center for Women,

Blanch Prison, Craggy Prison, Caledonia Prison and Odom Prison. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-26.2. Area inmate labor commissions. — (a) The area inmate labor commissions are hereby reconstituted. Each reconstituted area commission shall have six members who shall be residents of the area, to be appointed by the Governor as follows: one representative of the League of Municipalities, one representative of the community colleges and technical institutes in the area, one representative of the Department of Correction designated by the Secretary of Correction and serving as an ex officio member, and three interested and knowledgeable citizens. The members of the commission shall serve for terms commencing upon their appointment and expiring July 1, 1981. Thereafter their successors shall be appointed for terms of four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on an area commission shall be for the remainder of the term of the member causing the vacancy. The Governor shall have the authority to remove any member of an area commission from office for misfeasance, malfeasance or nonfeasance.

(b) Each area commission shall select a chairman from its membership. The chairman shall serve a term of one year.

(c) Each area commission shall meet at least four times per year. The Department of Correction shall provide space for meetings of each area commission at the location of the main office of the area administrator.

(d) The general function of each area commission shall be to encourage the constructive employment of State prison inmates in its area on local public work projects by recommending appropriate projects to the Secretary. Each unit superintendent shall report to the area commission in his area all proposals for the employment of inmates on specific local public work projects that he may develop on his own initiative or that may be suggested to him by any local government, civic organization or citizen of North Carolina. Each area commission shall consider each proposal, including proposals developed by its members, regarding inmate employment in local public work to determine if it meets the criteria provided by G.S. 148-26(a). If the proposal meets the criteria, the area commission shall forward the proposal and its recommendation in writing to the Secretary. The Secretary shall have complete discretion to enter into a contract to provide inmate labor for the proposed local public work. (1975, c. 682, s. 3; 1977, c. 685, s. 1.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

The 1977 amendment rewrote subsection (a).

Session Laws 1977, c. 685, s. 3, provides: "The State Inmate Labor Commission shall at their regularly scheduled meetings study the inmate labor programs of other states, in particular the states of Florida and Texas, and make appropriate recommendations to the 1979 General Assembly."

§ 148-26.3. State Inmate Labor Commission. — (a) The State Inmate Labor Commission is hereby reconstituted and shall consist of 10 members as follows: the chairmen of the six area inmate labor commissions as provided in G.S. 148-26.2; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House for a term of two years; one member of the North Carolina Senate to be appointed by the Lieutenant Governor for a term of two years; the Secretary of Correction or his designee to serve as an ex officio member; and a general chairman to be appointed by the Governor for

a term commencing upon his appointment and expiring July 1, 1981. Thereafter the general chairman shall be appointed for a term of four years. In the event of the death, resignation or disqualification of the general chairman, the Governor shall appoint a new general chairman to fill the unexpired term. The Governor shall have the authority to remove any member of the Commission for misfeasance, malfeasance or nonfeasance.

(b) The State Inmate Labor Commission shall meet at least four times per year in Raleigh in space provided by the Department of Correction. The general chairman shall act as chairman at all meetings. The general chairman and four other members of the commission shall constitute a quorum for the purpose of doing business.

(c) The State Inmate Labor Commission shall recommend to the Secretary the employment of State prison inmates on specific State public work projects subject to the following procedure:

(1) Any civic organization, area inmate labor commission unit superintendent, or citizen of North Carolina may suggest the employment of inmates on a specific State public work project. The suggestion must be made in writing to the department head of the principal department of State government that owns or is primarily responsible for the State land on which the proposed project is to take place.

(2) The department head may in his discretion submit in written form any proposal regarding inmate employment on a specific State public work project affecting his department, whether the proposal is received from others or developed on his own initiative, to the State Inmate Labor Commission.

(3) The State Inmate Labor Commission shall examine each proposal regarding inmate employment on a specific State public work project, whether the proposal is received from others or developed by Commission members, to determine whether it meets the criteria provided by G.S. 148-26(a). If the proposal meets the criteria, the Commission shall forward the proposal and its recommendation in writing to the Secretary. The Secretary shall have complete discretion to enter into a contract to provide inmate labor for the proposed State public work.

(d) The State Inmate Labor Commission shall advise the Secretary on the employment of State prison inmates, make a written report at least once per year to the Secretary and the General Assembly concerning inmate employment throughout the State, make other reports as the Secretary may require and may submit proposed legislation to the General Assembly concerning inmate employment. (1975, c. 682, s. 3; 1977, c. 685, s. 2.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

The 1977 amendment rewrote subsection (a).

Session Laws 1977, c. 685, s. 3, provides: "The State Inmate Labor Commission shall at their regularly scheduled meetings study the inmate labor programs of other states, in particular the states of Florida and Texas, and make appropriate recommendations to the 1979 General Assembly."

§ 148-26.4. Compensation of members of inmate labor commissions. — Members of the area inmate labor commissions and the State Inmate Labor Commission shall receive compensation and expense allowance as provided by G.S. 138-5. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-26.5. Pay and time allowances for work. — The provisions of G.S. 148-18 and 148-13 shall be applicable to inmate work on local or State public work projects contracted for by the Secretary of Correction as provided by G.S. 148-26 through 148-26.4. Travel, cost of inmate wages and custodial supervision expenses incurred by the Department of Correction and arising out of a local or State public work project shall be reimbursed on a cost basis to the Department of Correction by the local or State contracting agency. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-28. Sentencing prisoners to Central Prison; youthful offenders. — The several judges of the superior courts of this State are hereby given express authority in passing sentence upon persons convicted of a felony, when, in their opinion, the nature of the offense or the character or condition of the defendant makes it advisable to do so, to sentence such person to the Central Prison at Raleigh, and thereupon a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. Provided, that a person under 16 years of age convicted of a felony shall not be sentenced to or imprisoned in the Central Prison at Raleigh unless (i) said person was convicted of a capital felony or (ii) has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony. This provision shall not limit the authority of the Secretary of Correction from transferring a person under 16 years of age to Central Prison when in the Secretary's determination this person would not benefit from confinement in separate facilities for youthful offenders or when it has been determined that his presence would be detrimental to the implementation of programs designed for the benefit of other youthful offenders. Nor shall this provision limit the authority of the judges of the superior courts of this State or the Secretary of Correction from committing or transferring a person under 16 years of age to Central Prison for medical or psychiatric treatment. (1933, c. 172, s. 7; 1971, c. 691; 1973, c. 1262, s. 10.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary's" for "Commissioner's."

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 27, effective July 1, 1978, will rewrite the first two sentences of this section to read: "When a sentenced offender is to be taken to the Central Prison at Raleigh, a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. A person under 16 years of age convicted of a felony shall not be imprisoned in the Central Prison at Raleigh unless:

(1) The person was convicted of a capital felony; or

(2) He has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions

without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 27, effective July 1, 1978, will substitute "to be taken" for "sentenced" in the first sentence of this section.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-30. Sentencing to public roads. — In all cases not provided for in G.S. 148-28 and G.S. 148-32 the courts sentencing defendants to imprisonment with hard labor shall sentence such prisoners to jail, to be assigned to work under the State Department of Correction, and the clerks of the several courts in which such sentences are pronounced shall notify the superintendent of the nearest highway prison camp, or such other agent of the Department as he may be advised by them is the proper person to receive such notice. Whereupon, the Department shall cause some duly authorized agent thereof to take such prisoners into custody, with the proper commitments therefor, and deliver them to such camp or station as the proper authorities of the Department shall designate: Provided, however, the Department shall not be required to accept any prisoner from any court inferior to the superior court when an appeal has been taken to the superior court, or when the judge of such inferior court shall retain control over the sentence for the purpose of modifying or changing the same. No male misdemeanant offender shall be so assigned whose total term of imprisonment is 180 days or less. (1933, c. 172, s. 8; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1977, c. 450, s. 1; c. 925, s. 1.)

Editor's Note. —

Session Laws 1977, c. 450, s. 1, effective July 1, 1977, as amended by Session Laws 1977, c. 925, s. 1, substituted "misdemeanant offender" for "person" and "180 days or less" for "30 days" and inserted "total" in the third sentence.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Applied in State v. Pierce, 28 N.C. App. 191, 220 S.E.2d 639 (1975).

§ 148-32: Repealed by Session Laws 1977, c. 450, s. 2, effective July 1, 1977.

Editor's Note. — This section was also repealed, effective July 1, 1978, by Session Laws 1977, c. 711, s. 33.

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release. — (a) The Secretary of the Department of Correction is hereby authorized and empowered to contract with local government entities which have under their control local confinement facilities housing prisoners serving sentences of 30 to 180 days. The Secretary of the Department of Correction is authorized and empowered to pay to the appropriate local confinement facility the per diem cost of providing food, clothing, personal items, supervision and necessary medical services to those prisoners serving sentences of 30 to 180 days. Any contract made pursuant to this authority shall be for a period of not more than two years, and shall be renewable biennially for a period not to exceed two years. The financial provisions of the contract shall be approved by the Secretary of the Department of Administration before the contract is executed and shall include a provision setting the per diem rate or reimbursement. The per diem rate of reimbursement shall be based upon consideration of local staff requirements, cost of confinement of other inmates in local confinement facilities, average per diem cost of confinement of inmates in minimum custody facilities in the Department of Correction, and other relevant factors. Such contracts shall take into consideration additional staff and expenses incurred by the local confinement facility.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the judicial district where the facility is located, or any judge of the superior court or a special judge of the superior court assigned to hold court in the judicial district where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that judicial district. If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Parole Commission so that the prisoner will be eligible for misdemeanant parole pursuant to G.S. 148-60.3.

(d) In the event that the prisoner serving a sentence of 30 to 180 days in a local confinement facility is placed on work-release by the sentencing court pursuant to G.S. 148-33.1(a), the Department of Correction shall be responsible for deducting the appropriate fees from the work-release earnings of the prisoner pursuant to G.S. 148-33.1. In order for the Department of Correction to make the appropriate deductions, it shall be the responsibility of the custodian of the local confinement facility to forward the work-release earnings of the prisoner to the Department of Correction.

(e) Upon entry of a prisoner into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 148-60.3. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Parole Commission. The Parole Commission shall approve

a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2.)

Editor's Note. — Session Laws 1977, c. 450, s. 9, makes this section effective July 1, 1977. The 1977 amendment substituted "180 days or less" for "less than 180 days" at the end of the second sentence of subsection (b).

§ 148-33. Prison labor furnished other State agencies. — The State Department of Correction may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such Department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of G.S. 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this Article or in this Chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State deapartment, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Secretary of Correction is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges. — (a) Whenever a person is sentenced to imprisonment for a term not exceeding five years to be served in the State prison system or a local confinement facility, the Secretary of the Department of Correction may authorize the Director of Prisons or the custodian of the local confinement facility to grant work-release privileges to any such inmate as may be eligible for the program as is hereinafter established. The Secretary of Correction shall authorize immediate work-release privileges for any person serving a sentence not exceeding five years in the State prison system and for whom the presiding judge shall have recommended work-release privileges when (i) it is verified that appropriate employment for the person is available in an area where, in the judgment of the secretary, the Department of Correction has facilities to which the person may suitably be assigned, and (ii) custodial and correctional considerations would not be adverse to releasing the person without supervision into the free community.

(b) The Parole Commission of this State may authorize the State Department of Correction to grant work-release privileges to any inmate of the State prison system serving a term of greater than five years: Provided, that if the inmate thus being considered for work-release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate, the Parole Commission shall not authorize the Department of Correction to grant him work-release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(c) The State Department of Correction shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for

quartering prisoners with work-release privileges. No State or county prisoner shall be granted work-release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The Parole Commission is authorized and directed to establish a work-release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work-release plan, then such prisoner may be withdrawn from work-release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work-release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;

(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;

(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;

(3a) To make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is imposed as a condition of work-release privileges pursuant to the provisions of G.S. 148-33.2.

(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any case before such court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(i) No recommendation for work release shall be made at the time of sentencing in any case in which the presiding judge shall suspend the imposition of sentence and place a convicted person on probation; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time recommend work release. Neither a recommendation for work release by the court or the decision of the Secretary of Correction to place a person on work release shall give rise to any vested statutory right to an individual to be placed on or continued on work release. (1957, c. 540; 1959, c.

126; 1961, c. 420; 1963, c. 469; ss. 1, 2; 1967, c. 684; c. 996, s. 13; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10; 1975, c. 22, ss. 1-3; c. 679, s. 3; 1977, c. 450, ss. 4, 5; c. 614, s. 6; c. 623, ss. 1, 2.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in two places in subsection (b) and in one place in subsection (d). The amendment also substituted "Parole Commission" for "State Department of Correction" in the first sentence of subsection (d).

The first 1975 amendment, effective July 1, 1975, rewrote subsection (a) and substituted "a term of greater than five years" for "a term of imprisonment" and "Provided, that if the inmate thus" for "Provided, in any case where the inmate" in subsection (b). The amendment also deleted the former second sentence of subsection (d), which provided for work-release privileges only upon recommendation of the presiding judge or written authorization of the Parole Commission.

The second 1975 amendment deleted in subsection (c) the second sentence, which related to contracts with political subdivisions for the quartering in local facilities of prisoners with work-release privileges.

The first 1977 amendment, effective July 1, 1977, inserted "or local confinement facility," "or the custodian of the local confinement facility" and "is" preceding "hereinafter established" in the first sentence of subsection (a), and inserted "State or county" in the second sentence of subsection (c). The first 1977 amendment also amended the second sentence of subsection (a) to read as follows: "The Department of Correction or the custodian of the local confinement facility, upon recommendation of the presiding judge, shall immediately issue temporary work-release privileges to any inmate so recommended upon verification of employment or at such time after commitment to the Department of Correction or to a local confinement facility as employment can be obtained and verified."

The second 1977 amendment, effective Oct. 1, 1977, added subdivision (3a) of subsection (f).

The third 1977 amendment, effective July 1, 1977, rewrote the second sentence of subsection (a) to read as set out above and added subsection (i).

Session Laws 1977, c. 614, s. 10, provides: "This act shall become effective on October 1, 1977, and shall apply to offenses committed on and after that date."

Session Laws 1977, c. 614, s. 9, contains a severability clause.

As the other subsections were not changed by the amendments, they are not set out.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 29, effective July 1, 1978, will amend subsection (b) to read as follows:

"(b) The Parole Commission of this State may authorize the State Department of Correction to grant work-release privileges to any inmate of the State prison system serving a term of greater than five years. If the inmate is not eligible for parole, the Parole Commission shall not authorize the Department of Correction to grant him work-release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Authority to Grant Work-Release Privileges for Inmates Serving Terms Greater Than Five Years. — Subsection (b) of this section read in conjunction with § 143B-266(b) makes it clear that all releasing authority for work-release privileges for any inmate serving a term greater than five years rests ultimately in the Parole Commission. State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

Authority to Grant Work-Release Privileges for Inmates Serving Indeterminate Sentences or Sentences Exceeding Five Years. — Under G.S. 148-33.1(a), the Department of Correction is not authorized to place on Work Release, without Parole Commission approval, an inmate with an indeterminate sentence of five to ten years (or with any maximum sentence in excess of five years). Opinion of Attorney General to Mr. Jack Scism, 45 N.C.A.G. (1975).

§ 148-33.2. Restitution by prisoners with work-release privileges. — (a) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned

by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of attaining work-release privileges pursuant to a plea arrangement made under provisions of G.S. 15A-1021. The Secretary and the Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented, the Secretary and the Parole Commission shall state in writing why they cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are further authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work-release privileges. The Secretary and the Parole Commission shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission and the Secretary of Correction to be imposed as a condition of attaining work-release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work-release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work-release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Secretary of the Department of Correction and the Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of work release, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 7.)

Editor's Note. — Session Laws 1977, c. 614, s. 10, provides: "This act shall become effective on October 1, 1977, and shall apply to offenses committed on and after that date."

Session Laws 1977, c. 614, s. 9, contains a severability clause.

§ 148-36. Secretary of Correction to control classification and operation of prison facilities. — All facilities established or acquired by the State Department of Correction shall be under the administrative control and direction of the Secretary of Correction, and operated under rules and regulations proposed by the Secretary and adopted by the Department of Correction as provided in G.S. 148-11. Subject to such rules and regulations, the Secretary shall classify the facilities of the State prison system and develop a variety of programs so as to permit proper segregation and treatment of prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in

providing an individualized system of discipline, care, and correctional treatment of persons committed to the Department. The Secretary of Correction, or his authorized representative, shall designate the places of confinement where sentences to imprisonment in the State's prison system shall be served. The Secretary or his representative may designate any available facility appropriate for the individual in view of custodial and correctional considerations. (1931, c. 145, s. 28; c. 277, s. 8; 1933, c. 46, ss. 3, 4; c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10; 1967, c. 996, s. 7; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary" for "Commissioner" throughout the section and substituted "Department of Correction" for "Commission of Correction" near the end of the first sentence.

§ 148-37. Additional facilities authorized; contractual arrangements. — (a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in federal, county or city facilities located in North Carolina, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county, and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10; 1975, c. 879, s. 46.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in subsection (b).

The 1975 amendment, effective July 1, 1975, deleted "the Budget Division of" preceding "the Department of Administration" at the end of subsection (a).

§ 148-41. Recapture of escaping prisoners; reward. — The Secretary of Correction shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Secretary shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem desirable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Department of Correction and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Secretary" for "Commissioner."

§ 148-42. Indeterminate sentences. — The several judges of the superior court are authorized in their discretion in sentencing prisoners to imprisonment to commit the prisoner to the custody of the Secretary of Correction for a minimum and maximum term. The maximum term imposed shall not exceed the limit otherwise prescribed by law for the offense of which the person is convicted. At any time after the prisoner has served the minimum term less earned allowances for good behavior, pursuant to G.S. 143B-266(b), the Parole Commission is authorized to unconditionally discharge such person. (1933, c. 172, s. 24; 1955, c. 238, s. 9; 1967, c. 996, s. 9; 1973, c. 1262, s. 10; 1975, c. 720, s. 1.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" in the first sentence and at the end of the fourth sentence, substituted "Secretary" for "Commissioner" near the middle of the third sentence and "Secretary's" for "Commissioner's" in the fourth sentence and substituted "Parole Commission" for "Commissioner" at the end of the third sentence and for "Commissioner of Correction" near the middle of the fourth sentence. The amendment also deleted the former last sentence, relating to consultation and cooperation between the former Commissioner of Correction and the former Board of Paroles.

The 1975 amendment, effective July 1, 1975, substituted "pursuant to G.S. 143B-266(b), the Parole Commission is authorized to unconditionally discharge such person" for "the Secretary is authorized to discharge such person unconditionally or release him from confinement under conditions prescribed by the Parole Commission" at the end of the third sentence and deleted the former fourth and fifth sentences, which related to modification and revocation of conditional releases.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Sentence fixing identical minimum and maximum terms of imprisonment is invalid. State v. Teat, 24 N.C. App. 621, 211 S.E.2d 816, cert. denied, 286 N.C. 726, 213 S.E.2d 725 (1975);

State v. Teachey, 26 N.C. App. 338, 215 S.E.2d 805, appeal dismissed, 288 N.C. 512, 219 S.E.2d 348 (1975).

Stated in Greensboro Elks Lodge v. North Carolina Bd. of Alcoholic Control, 27 N.C. App. 594, 220 S.E.2d 106 (1975).

Cited in State v. Scales, 28 N.C. App. 509, 221 S.E.2d 898 (1976).

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction. — (a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape or attempt to escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;

(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) A person who shall have been convicted of a misdemeanor and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or

(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape or attempt to escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years:

(1) A prisoner serving a sentence imposed upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) A person who shall have been convicted of a felony and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b).

(c) Any person convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom, shall be guilty of a felony and upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court.

(e) Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person. Persons charged with the offense of escape or attempt to escape under the provisions of this section shall not be entitled to plea conference consideration as provided in G.S. 15A-1021.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison

system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g) (1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and on temporary parole by permission of the State Parole Commission or other authority of law or any youthful offender granted relief under G.S. 148-49.1 et seq., who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745.)

Editor's Note. —

The first 1973 amendment rewrote the section.

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" near the middle of the first sentence of subsection (g). The second amendatory act directed that the change be made in subsection (b) of the section as it stood before the first 1973 amendment. Subsection (g) of the section as rewritten by the first 1973 amendment is similar to former subsection (b), and subsection (g) has, therefore, been treated as amended.

The first 1975 amendent substituted "run concurrently with all former sentences remaining to be served" for "commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person" at the end of subsection (e).

The second 1975 amendment designated the former provisions of subsection (g) as subdivision (1) and added subdivision (2) in subsection (g).

The third 1975 amendment corrected a clerical error in Session Laws 1975, c. 241, by substituting "four months" for "one year" near the end of subdivision (2) of subsection (g).

The fourth 1975 amendment, effective July 1, 1975, inserted "except as provided in subsection (g) of this section" near the beginning of subsection (a) and made the same insertion near the beginning of subsection (b).

The first 1977 amendment, effective Oct. 1, 1977, deleted "or 148-49.3" from the end of subdivisions (a)(4) and (b)(4).

The second 1977 amendment rewrote subsection (e).

For note on the availability of the defense of duress in prison escapes, see 12 Wake Forest L. Rev. 1102 (1976).

Prisoners Hired by Highway Commission, etc. —

An escape by a prisoner assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation) constitutes an escape from the State prison system. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

A second escape is a felony. —

A second escape is a felony, even though the first escape came at a time when the prisoner was serving another sentence. State v. Stone, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

The intent of the General Assembly was to declare a second offense of escape, or attempted escape, a felony regardless of the time elapsing or events occurring between the two offenses. State v. Stone, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

Sufficiency of Indictment. — Where bill of indictment charged that defendant escaped while lawfully confined in the North Carolina State prison system in the lawful custody of the North Carolina Department of Correction, and the evidence showed he escaped while assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation), the variance was not fatal. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Prejudicial Error Not to Charge Jury, etc. — The court erred where it did not require the jury to find beyond a reasonable doubt that the defendant was serving a felony sentence in a prosecution under this section. State v. Johnson, 21 N.C. App. 85, 203 S.E.2d 424 (1974).

Evidence Required under Indictment for Fifth Offense of Escape. — Where the indictment alleges a fifth offense of escape, this creates the chore of offering competent evidence of four prior convictions for the offense of escape. Under this section the maximum punishment which can be imposed for an offense of escape is authorized for a second offense. If the indictment had charged second offense, instead of fifth, the State would have needed to prove only one of the prior convictions. State v. Chapman, 20 N.C. App. 456, 201 S.E.2d 579 (1974).

Applied in State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973); State v. Sadler, 19 N.C. App. 641, 199 S.E.2d 702 (1973); State v. Lowe, 21 N.C. App. 98, 203 S.E.2d 96 (1974); State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Stated in State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

Cited in State v. McDowell, 24 N.C. App. 590, 211 S.E.2d 475 (1975).

§ 148-46. Degree of protection against violence allowed. — (a) When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape.

(b) A misdemeanor prisoner classified and treated as a convicted felon as the result of a consecutive felony sentence or sentences, or a convicted felon placed in the custody of the Secretary of Correction pending the outcome of an appeal, or a defendant charged with a felony or felonies and placed in the custody of the Secretary of Correction pending trial, shall be considered as a convicted felon in the custody of the Secretary of Correction against whom any means reasonably necessary, including deadly force, may be used to prevent an escape. (1933, c. 172, s. 27; 1975, c. 230.)

Editor's Note. — The 1975 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

§ 148-48. Parole powers of Parole Commission unaffected. — Nothing in this Chapter shall be construed to limit or restrict the power of the Parole Commission to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

ARTICLE 3A.

Facilities and Programs for Youthful Offenders.

§§ 148-49.1 to 148-49.9: Repealed by Session Laws 1977, c. 732, s. 1, effective October 1, 1977.

Cross Reference. — For present provisions covering the subject matter of the repealed sections, see §§ 148-49.10 et seq.

Editor's Note. — Session Laws 1977, c. 732, s. 6, effective October 1, 1977, provides: "All commitments to the Department of Correction under G.S. 148-49.3 shall be treated as commitments under G.S. 148-12(b)."

Section 148-49.3 was also repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article. — The purposes of this Article are to improve the chances of correction, rehabilitation and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge. It is the intent of this Article to provide the courts with an additional sentencing possibility to be used in the court's discretion for correctional punishment and treatment in cases, where in the opinion of the court, a youthful offender requires a period of imprisonment, but no longer than necessary for the Parole Commission to determine that the offender is suitable for a return to freedom and is ready for a period of supervised freedom as a step toward unconditional discharge and restoration of the rights of citizenship. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2.)

Cross Reference. — For provision that this Article shall control over Session Laws 1977, c. 871, in event of conflict, see Editor's note to §§ 14-52 and 14-87.

Editor's Note. — This Article is Article 3A of this Chapter as rewritten by Session Laws 1977, c. 732, s. 2, effective Oct. 1, 1977, and recodified. Where appropriate, the historical citations to the sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

Quoted in State v. Matre, 32 N.C. App. 309, 231 S.E.2d 688 (1977).

§ 148-49.11. Definitions. — As used in this Article, a "youthful offender" is a person under 21 years of age in the custody of the Secretary of Correction. A "committed youthful offender" is a youthful offender who shall have the benefit of early release under the provisions of G.S. 148-49.15. All rights accrued by persons prior to October 1, 1977, shall not be affected. (1949, c. 297, s. 2; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.12. Treatment of youthful offenders. — (a) To the extent practicable in light of the needs of the youthful offenders and of the needs and resources of the prison system, the Secretary of Correction shall house youthful offenders in facilities separate from prisoners over 21 years of age. In any case where the program needs of a youthful offender or the resources of the Department of Correction prohibit such separate housing, the youthful offender may be assigned to any prison facility pursuant to G.S. 148-4 and G.S. 148-36 as the Secretary of Correction shall deem appropriate. Facilities designated for the housing of youthful offenders shall be, to the extent feasible, adapted to the needs and treatment of youthful offenders. The Secretary shall endeavor to provide personnel specially qualified by training, experience, and personality for treatment of youthful offenders.

(b) The Department of Human Resources is authorized to establish and construct on any property of the State under its supervision and control modern facilities where youthful offenders committed to the custody of the Secretary of Correction may be sent for treatment, training, or work under rules and regulations jointly adopted by the Department of Human Resources and the

State Department of Correction. The plans, specifications and construction of such facilities shall meet the requirements of the Secretary of Correction. The cost of the maintenance of youthful offenders assigned to such facilities by the Secretary of Correction and employed in work for the benefit of the Department of Human Resources shall be borne by the Department of Human Resources. The youthful offenders assigned to such facilities shall be under the care and supervision of agents and employees of the Department of Correction or of agents and employees of the Department of Human Resources as may be agreed upon by the two State agencies.

(c) Youthful offenders may be required to participate in vocational, educational and correctional training and activities. Appropriate use shall be made of other methods of treatment, including medical and psychiatric. The Secretary of Correction may extend the limits of the place of confinement of a youthful offender when there is reasonable cause to believe that he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time for any purpose consistent with the public interest. Willful failure to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary as provided in G.S. 148-45.

(d) The Secretary of Correction may contract with any appropriate public or private agency not under his control for treatment and training services to youthful offenders when this is the most economical or effective way to provide needed services. (1967, c. 996, s. 10; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.13. Classification studies. — Every youthful offender shall first be sent to a diagnostic and classification center for a complete study, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school and family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency and criminal activities. All agencies of State and local government in North Carolina shall cooperate with the State Department of Correction in supplying or verifying information helpful for diagnosis, classification, and program planning for youthful offenders. A report of the findings and recommendations of the diagnostic and classification center shall be sent to the Secretary of Correction and shall be made available to the Parole Commission, and to the Department of Human Resources if needed. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.14. Sentencing committed youthful offenders. — As an alternative to a sentence of imprisonment as is otherwise provided by law, when a person under 21 years of age is convicted of an offense punishable by imprisonment and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such person to the custody of the Secretary of Correction for treatment and supervision as a committed youthful offender. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted or 20 years, whichever is less. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed shall not be for less than one year. If the court shall find that a person under 21 years of age should not obtain the benefit of release under G.S. 148-49.15, it shall make such "no benefit" finding on the record. Whenever the court shall suspend the imposition or execution of sentence and place a person on probation, the court shall not order commitment as a committed youthful

offender; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time commit the person, if he is still under 21 years of age, to the custody of the Secretary of Correction as a committed youthful offender. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.15. Parole of committed youthful offenders. — (a) The Parole Commission may at any time after reasonable notice to the Secretary of Correction parole under supervision a committed youthful offender pursuant to the provisions of Article 4 of this Chapter. When, in the judgment of the Secretary of Correction, a committed youthful offender is ready for parole under supervision, the Secretary may also recommend such action to the Parole Commission. It shall not be necessary for a committed youthful offender to have served one quarter of his sentence before becoming eligible for parole.

(b) When the Parole Commission paroles any committed youthful offender, the time that the committed youthful offender spends at liberty on parole shall be limited and shall be credited toward his active sentence in the same manner as would have occurred had such person been paroled pursuant to Article 4 of this Chapter.

(c) The Parole Commission, after notice to the Secretary of Correction, may release a committed youthful offender on parole within the last 90 days of his maximum term of commitment.

(d) The Parole Commission may revoke or modify any of its orders respecting a committed youthful offender except an order of unconditional discharge. Upon the unconditional discharge by the Parole Commission of a committed youthful offender before the expiration of the maximum sentence imposed upon him, all rights of citizenship which he forfeited on conviction shall be automatically restored and the Parole Commission shall issue to the committed youthful offender a certificate to that effect. (1967, c. 996, s. 10; 1973, c. 1153; c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2.)

§ 148-49.16. Supervision of paroled youthful offenders and revocation of such parole. — (a) Paroled youthful offenders shall be under the supervision of agents and employees of the Department of Correction. The Department of Correction is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by rules and regulations adopted by the Parole Commission.

(b) If at any time before unconditional discharge of a youthful offender the Parole Commission is of the opinion that for proper reason parole should be revoked, revocation shall proceed under the provisions of Article 4 of this Chapter. After revocation of parole, the Parole Commission may thereafter reinstate parole at such time as in the commission's discretion the youthful offender is ready for reinstatement. Notice to the Secretary of Correction of intent to reinstate parole shall not be required. (1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 89; c. 720, s. 2; 1977, c. 732, s. 2.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

ARTICLE 4.

Paroles.

§ 148-52: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

Cross Reference. — As to transfer of the functions of the Board of Paroles to the Department of Correction, see § 143B-262.

§ 148-52.1. Prohibited political activities of member of Parole Commission or employee of Department. — No member of the Parole Commission or employee of the Department of Correction shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether voluntary or involuntary, to any political party. Any Parole Commission member or employee of the Department who shall violate any of the provisions of this section shall be subject to dismissal from office or employment. (1953, c. 17, s. 4; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in the first sentence and "Department" for "Board" near the middle of the second sentence and substituted "Parole Commission" for "Board" near the beginning of the second sentence. The amendment also inserted "of the Parole Commission" following "No member" near the beginning of the first sentence.

§ 148-53. Investigators and investigations of cases of prisoners. — For the purpose of investigating cases of prisoners serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms, the Department of Correction is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission, investigate all cases designated by the Commission, and otherwise aid the Commission in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2; 1973, c. 1262, s. 10; 1977, c. 704, s. 3.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" near the beginning of the section and "Commission" for "Board" near the end of the section. The amendment also substituted "Parole Commission" for "Board of Paroles" and "rules and regulations duly adopted by" for "direction of" in provisions subsequently eliminated by the 1977 amendment.

The 1977 amendment, effective July 1, 1977, substituted "under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission" for "under the rules and regulations duly adopted by the Parole Commission" near the middle of the section and substituted "the Commission" for "it" following "all cases designated by" near the middle of the section.

Amendment Effective July 1, 1978. — Session Laws 1977, c. 711, s. 30, effective July 1, 1978, will delete "serving both determinate

and indeterminate sentences in the State prison, in prison camps, and on prison farms" near the beginning of the section.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-54. Parole supervisors provided for; duties. — The Department of Correction is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted for the work required of them, and who shall under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission, exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Department of Correction, maintain frequent contact with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions, and they shall perform such other duties in connection with paroled prisoners as the Department of Correction may require. The number of supervisors may be increased by the Department of Correction as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11; 1973, c. 1262, s. 10; 1977, c. 704, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in four places and "Parole Commission" for "Board of Paroles" in one place. The amendment also substituted "the Commission" for "it" near the middle of the first sentence.

The 1977 amendment, effective July 1, 1977, inserted "the Department of Correction after consultation with" near the middle of the first sentence and substituted "Department of Correction" for "Parole Commission" near the end of the second sentence.

§ 148-55: Repealed by Session Laws 1973, c. 1262, s. 10, effective July 1, 1974.

§ 148-56. Assistance in supervision of parolees and preparation of case histories. — Upon request by the Parole Commission, the county directors of social services shall assist in the supervision of parolees and shall prepare and submit to the Parole Commission case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186; 1969, c. 982; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in two places.

§ 148-57. Rules and regulations for parole consideration. — The Parole Commission is hereby authorized and empowered to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and by which such proceedings may be initiated and considered. That the rules and regulations shall include but not be limited to, a plan whereby the Parole Commission may determine parole eligibility, and, when eligibility is so approved, provide for parole of a prisoner

to a plan approved by the Secretary of the Department of Correction. (1935, c. 414, s. 7; 1955, c. 867, s. 4; 1973, c. 1262, s. 10; 1977, c. 704, s. 2.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

The 1977 amendment, effective July 1, 1977, deleted "and investigated" following "reviewed" near the end of the first sentence and added the second sentence.

Cited in Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974).

§ 148-57.1. Restitution as a condition of parole. — (a) As a rehabilitative measure, the Parole Commission is authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of parole pursuant to a plea arrangement made under the provisions of G.S. 15A-1021. The Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot reasonably be implemented, the Parole Commission shall state in writing why it cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Parole Commission is further authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining parole. The Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of his parole, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 8.)

Editor's Note. — Session Laws 1977, c. 614, s. 10, provides: "This act shall become effective on October 1, 1977, and shall apply to offenses committed on and after that date."

Session Laws 1977, c. 614, s. 9, contains a severability clause.

§ 148-58. Time of eligibility of prisoners to have cases considered. — All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, and a

fourth of their minimum sentence, if their sentence is indeterminate; provided, that any prisoner serving sentence for life shall be eligible for such consideration when he has served 20 years of his sentence. Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5; 1973, c. 1201, s. 5.)

Editor's Note. — The 1973 amendment substituted "20 years" for "10 years" near the end of the first sentence. The 1973 amendatory act became effective April 8, 1974, and provides that it shall be applicable to all offenses thereafter committed.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Due Process Applicable. — Prisoner's right to consideration for parole eligibility is, at least, an aspect of liberty to which the protection of the due process clause extends. Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974).

Stated in State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

Cited in State v. Williams, 286 N.C. 422, 212 S.E.2d 113 (1975).

§ 148-58.1. Credit for time spent on parole; effect of discharge; relief from further reports; permission to leave State or county. — (a) The time a parolee is at liberty on parole and in compliance with all terms and conditions of that parole shall be credited on a day-for-day basis against the sentence imposed by the court; provided, however, that such parolee shall receive no such credit for the period of the last six months of his parole or for the period such parolee spends in a correctional institution of any jurisdiction after having been convicted of a crime. In the event no revocation proceedings are instituted within the final six months of parole supervision, the Parole Commission shall unconditionally discharge such parolee. The period of parole shall not exceed the maximum term of imprisonment to which the parolee was sentenced, less the period of time during which the prisoner has been imprisoned under such sentence. The official discharge by the Parole Commission of a parolee shall have the effect of terminating the sentence or sentences under which the parolee was paroled.

(b) The Parole Commission may relieve a person on parole from making reports and may permit such person to leave the State or county if fully satisfied that this is for the best interest of both the parolee and society. (1953, c. 17, s. 7; 1955, c. 867, s. 10; 1973, c. 1262, s. 10; 1975, c. 618, s. 2; c. 720, s. 3.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

The first 1975 amendment, effective Sept. 1, 1975, added "except as provided in G.S. 148-60.2" at the end of the former first sentence of subsection (a), which provided that no parolee should be discharged before the expiration of one year.

The second 1975 amendment, effective July 1, 1975, rewrote subsection (a).

Subsection (a) is set out above as it appears in the second 1975 amendatory act, and no attempt has been made to give effect to the first 1975 amendment.

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction. — The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

(1) The court in which the prisoner was tried;
(2) The name of the prisoner and of all codefendants;
(3) The date or session when the prisoner was tried;
(4) The offense with which the prisoner was charged and the offense for which convicted;
(5) The judgment of the court and the date of the beginning of the sentence;
(6) The name and address of the presiding judge;
(7) The name and address of the prosecuting solicitor;
(8) The name and address of private prosecuting attorney, if any;
(9) The name and address of the arresting officer; and
(10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 108, s. 90; c. 1262, s. 10.)

Editor's Note. —

The second 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles" in the introductory clause of the first paragraph and substituted "Department of Correction" for "Board of Paroles" in the first sentence of the second paragraph.

§ 148-60: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 771, s. 36, contains a severability clause.

The due process clause applies in procedures

designed to determine suitability for parole. Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974), vacated as moot, 423 U.S. 147, 96 S. Ct. 347, 46 L.Ed.2d 350 (1975).

Sentencing process may not be expressly employed to thwart the parole process, the responsibility for which is vested in another branch of government. State v. Snowden, 26 N.C. App. 45, 215 S.E.2d 157, cert. denied, 288 N.C. 251, 217 S.E.2d 675 (1975).

The granting, withholding or frustration of the parole power is not and has never been a responsibility of the judicial branch of government. State v. Snowden, 26 N.C. App. 45, 215 S.E.2d 157, cert. denied, 288 N.C. 251, 217 S.E.2d 675 (1975).

Parole Not to Be Anticipated in Sentencing. — Release of a prisoner before completion of his sentence cannot and should not be anticipated with exactness by the trial judge as the basis for the imposition of sentences in cases. State v. Snowden, 26 N.C. App. 45, 215 S.E.2d 157, cert. denied, 288 N.C. 251, 217 S.E.2d 675 (1975).

§ 148-60.1. Allowances for paroled prisoner. — Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Parole Commission may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money not to exceed twenty-five dollars ($25.00). (1953, c. 17, s. 8; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

§ 148-60.2. Administrative procedures for parole. — (a) Subject to the provisions of subsection (c) the Parole Commission shall parole each prisoner who is serving a minimum sentence of two years or more, not later than 90 days prior to the expiration of his sentence if such sentence is determinate, less earned allowances for good behavior; or 90 days prior to the expiration of his maximum sentence, less earned allowances for good behavior, if such sentence is indeterminate, unless the Parole Commission in all cases, whether sentence be determinate or indeterminate, shall find that release of the prisoner is not compatible with the welfare of society.

(b) The official discharge by the Parole Commission of such a parolee shall occur not later than the final expiration date of the sentence, less earned allowances for good behavior.

(c) Each prisoner who becomes eligible for parole under subsection (a) of this section may reject such parole, in which case he will remain in the custody of the Department of Correction for the rest of his term of imprisonment. If a prisoner who has been released under subsection (a) violates the terms of his parole, the Parole Commission shall revoke the order of his parole and that parolee then shall be returned to the penal institution having custodial jurisdiction over him. A prisoner who has been granted a parole under subsection (a) and who subsequently has had such parole revoked under the provisions of this subsection shall be ineligible for further parole under any provisions of the law during the remainder of the time which he has to serve under that sentence of imprisonment. (1975, c. 618, s. 1.)

Editor's Note. — Session Laws 1975, c. 618, s. 3, makes the act effective Sept. 1, 1975.

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-60.3. Parole for misdemeanants. — (a) Subject to the provision of subsection (b), the Parole Commission shall parole every misdemeanant serving a minimum sentence of 30 days or serving a maximum sentence of less than 12 months at the expiration of one third of his sentence if determinate or one third of his minimum sentence if indeterminate.

This section shall not apply to any committed youthful offender as defined in G.S. 148-49.2.

(b) If the Parole Commission determines that there is reasonable probability:

(1) That the prisoner will not live and remain at liberty without violating the law; or

(2) That the release of the prisoner is incompatible with the welfare of society, it may, in its discretion, deny the parole provided for in subsection (a).

In making such determination the Parole Commission shall consider the prisoner's record during confinement. In order that the Parole Commission may have an adequate opportunity to make a determination whether parole under this section should be denied, no misdemeanant eligible for parole under this section shall be released from confinement prior to the fifth full working day after he shall have been placed in the custody of the Secretary of Correction.

(c) In cases where parole is refused as provided in subsection (b) of this section, the Parole Commission shall so inform the Department of Correction or the custodian of the local confinement facility and the concerned misdemeanant prior to the date on which the misdemeanant would have been paroled under subsection (a).

(d) Misdemeanants paroled under the provisions of this section may be relieved from the reporting requirements of G.S. 148-61 as provided in G.S. 148-58.1(b) but shall be subject to all other rules and regulations governing parole release, supervision and revocation.

(e) Paroles granted under provisions of this section shall be for a period of six months. A person paroled under provisions of this section who is charged with a new crime during the six-month period and subsequently convicted, resulting in parole revocation, shall serve the balance of the sentence before he may be considered for parole review.

(f) The provisions of this section shall not apply to any person sentenced to a term of special probation as provided in G.S. 15-197.1. (1975, c. 581, ss. 1-4; 1977, c. 450, ss. 6, 7; c. 624, ss. 1-3.)

Editor's Note. — Session Laws 1975, c. 581, s. 5, makes the act effective July 1, 1975.

The first 1977 amendment, effective July 1, 1977, substituted "serving a minimum sentence of 30 days or" for "within the jurisdiction of the Department of Correction," in the first paragraph of subsection (a) and inserted "or the custodian of the local confinement facility" in subsection (c).

The second 1977 amendment inserted "committed" in the second paragraph of subsection (a), added the second sentence of the second paragraph of subsection (b), and deleted "at least seven days" preceding "prior to the date" in subsection (c).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-61: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. —

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-61.1. Revocation of parole by Commission; conditional or temporary revocation. — (a) The Parole Commission may at any time revoke the order of parole of any parolee. If any parolee shall have his parole revoked, he thereafter shall be returned to the custody of the Secretary of Correction.

(b) The Parole Commission may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time during which the Parole Commission shall determine whether or not the conditions of said parole have been violated. If it is determined by the Parole Commission that the conditions of said parole have been violated, the Parole Commission may in its discretion revoke the order of parole. If it is determined by the Parole Commission that there has been no violation of the conditions of said parole, then such parolee or paroled prisoner shall be reinstated upon his original parole. (1951, c. 947, s. 1; 1955, c. 867, s. 6; 1973, c. 1262, s. 10; 1975, c. 720, s. 3.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

The 1975 amendment, effective July 1, 1975, deleted "in its discretion" following "may at any time" in the first sentence and rewrote the second sentence of subsection (a).

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Effect of Time Spent on Parole on Length of Sentence. — Under this section as it stood before the 1975 amendment, time spent on parole was not to be credited on an active sentence. While defendant on parole might have been under supervision of rules and regulations of Parole Commission and Department of Correction, nevertheless, he was "at liberty," and was not entitled to any credit on his prison sentence. State v. Davis, 19 N.C. App. 459, 199 S.E.2d 37 (1973).

§ 148-62. Discretionary revocation of parole upon conviction of crime. — If any parolee, while being at large upon parole, shall commit a new or fresh crime, and shall enter a plea of guilty or be convicted thereof in any court of record, then, in that event, his parole may be revoked according to the discretion of the Parole Commission and at such time as the Parole Commission may think proper. If such parolee, while being at large upon parole, shall commit a new or fresh crime and shall have his parole revoked, as provided above, he shall be subject, in the discretion of the Parole Commission, to serve the remainder of the first or original sentence upon which his parole was granted, after the completion or termination of the sentence for said new or fresh crime. Said remainder of the original sentence shall commence from the termination of his liability upon said sentence for said new or fresh crime. The Parole Commission, however, may, in its discretion, direct that said remainder of the original sentence shall be served concurrently with said second sentence for said new or fresh crime. The Commission's authority under this section shall apply to both in-state and out-of-state parolees from sentences in this State. (1935, c. 414, s. 12; 1951, c. 947, s. 2; 1955, c. 867, s. 12; 1973, c. 1262, s. 10; 1975, c. 450, s. 1.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

The 1975 amendment added the last sentence.

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

Repeal of Section. — This section is repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings. — Any parolee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the North Carolina Board of Paroles, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee claims not to have committed the alleged violation of the parole conditions; or

(2) The parolee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee is incapable of speaking effectively for himself; and where the Board feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness. (1973, c. 1116, s. 2.)

Editor's Note. — Session Laws 1973, c. 1116, s. 3, makes the act effective July 1, 1974.

For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-64. Cooperation of prison and parole officials and employees. — The officials and employees of the Department of Correction and the [Parole Commission] shall at all times cooperate with and furnish each other such information and assistance as will promote the purposes of this Chapter and the purposes for which these agencies were established. The Parole Commission shall have free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7; 1967, c. 996, ss. 11, 15; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, deleted "and its officers and employees" preceding "shall at all times" in the first sentence and substituted "Parole Commission" for "Board of Paroles and its staff" in the second sentence. "Parole Commission" has also been substituted, in brackets, for "Board of Paroles" in the first sentence, although a literal compliance with the 1973 amendatory act would have required the substitution of "Department of Correction." In amending the second sentence of this section, the 1973 act referred to line 4 of the section; the words "Board of Paroles" appeared in lines 4 and 5 of the section in the 1971 Cumulative Supplement to Volume 3C of the General Statutes, and in line 5 of the section in 1974 Replacement Volume 3C.

ARTICLE 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact.

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-65.1A. Interstate parole and probation hearing procedures. — (a) Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Parolees and Probationers, a deputy of such Administrator, or any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this section, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (1973, c. 1352.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-65.3. North Carolina sentence to be served in another jurisdiction. — The Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution, and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of his North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Parole Commission. (1975, c. 450, s. 2.)

ARTICLE 5.

Farming Out Convicts.

§ 148-70. Management and care of inmates; prison industries; disposition of products of inmate labor. — The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts; and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the inmates confined in the State prison as may in its discretion be proper. In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes, the Department may use the labor of inmates confined in the State prison in work on farms and manufacturing, either within or without the State prison. The Department may dispose of the products of the labor of the inmates, either in farming or in manufacturing or in other industry at the State prison system, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State. Provided however, no manufacturing or other industry shall be established, supervised or controlled by the Department unless specifically approved by the Advisory Budget Commission pursuant to G.S. 66-58(f).

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Department of Correction products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G.S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13; 1975, c. 730, s. 1.)

Editor's Note. —
The 1975 amendment, effective Oct. 1, 1975, rewrote the first paragraph.

Section 143-52 as rewritten by Session Laws 1971, c. 587, s. 1, no longer provides for a board of award.

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section. — Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The Secretary of Correction shall cooperate with the Secretary of Correction and the Secretary of Correction in joint efforts aimed at developing accurate and comprehensive case records on individual offenders. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction" and "Parole Commission" for "Board of Paroles" in the first sentence, substituted "Parole Commission" for "Board of Paroles" at the end of the second sentence, substituted "Secretary of Correction" for "Director of Probation," "Commissioner of Correction" and "chairman of the Board of Paroles" in the third sentence and substituted "Secretary of Correction" for "Director of Probation, the Commissioner of Correction and the chairman of the Board of Paroles" in the last sentence. In the third sentence of the section as set out above, the direction of Session Laws 1973, c. 1262, s. 10(a)(1) has been literally followed.

§ 148-78. Reports. — The Secretary of Correction may prepare and release reports on the work of the Department of Correction, including statistics and other data, accounts of research, and recommendations for legislation. (1925, c. 228, s. 5; 1953, c. 55, s. 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Secretary of Correction" for "Commissioner of Correction."

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-83. Form, requisites and contents of petition; nature of hearing. — Such petition shall be addressed to the Department of Correction, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Department of Correction shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Correction" for "Board of Paroles" in two places.

§ 148-84. Evidence; action by Parole Commission; payment and amount of compensation. — At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Parole Commission finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Parole Commission shall report the facts, together with his [its] conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars ($500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars ($5,000). (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Parole Commission" for "Board of Paroles."

ARTICLE 10.

Interstate Agreement on Detainers.

§§ 148-89 to 148-95: Transferred to §§ 15A-761 to 15A-767 by Session Laws 1973, c. 1286, s. 22, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 148-96 to 148-100: Reserved for future codification purposes.

ARTICLE 11.

Inmate Grievance Commission.

§ 148-101. Commission established; appointment and terms of members; chairman, vacancies; compensation. — The Inmate Grievance Commission is established as a separate agency within the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. Of the five members so appointed, not less than two shall be attorneys admitted to practice law in the State of North Carolina and not less than two of the remaining three members shall be persons of knowledge and experience in one or more of the fields under the jurisdiction of the Secretary of Correction. Of the members initially appointed, two shall be for a term of four years, one shall be for a term of three years, and one shall be for a term of two years and one shall be for a term of one year. Thereafter, all appointments shall be for a term of four years. The Governor shall designate the chairman from time to time. The Governor, with the advice of the Council of the North Carolina State Bar, shall fill any vacancy which occurs before the expiration of a term for the balance of the term so remaining. Each member of the Commission shall receive per diem and travel expenses as authorized for members of State commissions under G.S. 138-5. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Session Laws 1973, c. 1307, s. 2, makes the act effective July 1, 1974.

Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Department of Correction" has been substituted for "Department of Social Rehabilitation and Control" and "Secretary of Correction" has been substituted for "Secretary of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Department or Secretary of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and reorganized the Department of Correction.

§ 148-102. Appointment and salary of Executive Director, hearing examiners and other personnel. — (a) The Commission, with the approval of the Governor, shall appoint an Executive Director of the Commission who shall serve at the pleasure of the Commission, and who shall be subject to the State Personnel Act.

(b) Upon the request of the Executive Director with the approval of the Commission, the Secretary of Correction shall authorize the appointment by the Executive Director of hearing examiners in such numbers as may be necessary for the efficient administration of the powers and duties of the Commission. Hearing examiners shall serve at the pleasure of the Commission and shall be subject to the State Personnel Act.

(c) The Secretary of Correction shall provide the Commission and hearing examiners with such investigative, secretarial and clerical employees as may be necessary for the efficient administration of the powers and duties of the Commission. Said employees shall be subject to the State Personnel Act. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or the Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, which set up the Department, and enacted Article 6 of Chapter 143B reorganizing the Department of Correction.

§ 148-103. Removal of members. — The governor may remove any member of the Commission for one or more of the following reasons:

(1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Commission duties.
(2) Failure to regularly attend meetings of the Commission.
(3) Failure to carry out duties assigned by the Commission or its chairman.
(4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Commission duties.
(5) Any other ground which, under law, necessitates or justifies the removal of a State employee. (1973, c. 1307, s. 1.)

§ 148-104. Submission of grievance or complaint. — Any person confined to a facility within the department of the Secretary of Correction, or otherwise in the custody of the Secretary of Correction, who has any grievance or complaint against any officials or employees of the Department of Correction, may submit such grievance or complaint to the Inmate Grievance Commission within such time and in such manner as prescribed by regulations promulgated by the Commission. If, and to the extent that, the Department of Correction has a grievance or complaint procedure applicable to an inmate's particular grievance or complaint, and if the Inmate Grievance Commission deems such procedure reasonable and fair, the Commission shall by regulations require that such procedure be exhausted prior to the submission of the grievance or complaint to the Commission. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

§ 148-105. Preliminary review. — When a grievance or complaint is submitted to the Inmate Grievance Commission, the Commission, or any member thereof or the Executive Director, if so provided by the Commission's regulations, shall preliminarily review the grievance or complaint. If upon such preliminary review the grievance or complaint is determined to be on its face wholly lacking in merit, it may be dismissed by the reviewing commissioners or commissioner or Executive Director as the case may be, without a hearing or without specific findings of fact. If, after the preliminary review, it is determined that the nature of the grievance or complaint is outside the scope of authority of the Commission, the complaint shall be dismissed with recommendation as to how the inmate should proceed. Such order of dismissal shall be promptly forwarded to the complainant and shall constitute the final decision of the Secretary of Correction for purposes of any judicial review. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter

1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-106. Hearing and disposition by Commission; review by Secretary of Correction. — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, the Commission shall hold, as promptly as practicable, a hearing on the grievance or complaint. At least three members of the Commission shall sit at any hearing, and decisions shall be by a majority of those sitting. A record of the testimony presented at the hearing may be kept, according to the rules and regulations promulgated by the Commission. The Commission's decision shall be issued in the form of an order which shall include a statement of the findings of fact, the Commission's conclusions and its disposition of the grievance or complaint. The types of disposition shall be as follows:

(1) If after the hearing, the Commission finds in its order that the grievance or complaint is wholly lacking in merit and should be dismissed, such an order of dismissal shall be promptly forwarded to the complainant, and for the purpose of any judicial review, shall constitute the final decision of the Secretary of Correction.

(2) However, if after the hearing, the Commission in its order finds that the inmate's grievance or complaint was in whole or in part meritorious, such order shall be promptly forwarded to the Secretary of Correction. Within 15 days of the receipt of such an order, the Secretary, by order, shall affirm the order of the Commission, or shall reverse or modify the order if he disagrees with the findings and conclusions of the Commission. The Secretary shall order that the appropriate official of the facility in question accept, in whole or in part, the recommendation of the Commission or the Secretary may take whatever action he deems appropriate in light of the Commission's findings. The order of the Secretary shall be promptly forwarded to the complainant, and for the purpose of judicial review, the Secretary's order shall be final. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-107. Hearing by examiner; review; disposition. — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, and if hearing examiners are utilized, the Executive Director may designate an examiner to conduct a hearing as promptly as practicable. The examiner shall record the testimony presented at the hearing in accordance with the rules and regulations of the Commission. After the hearing, the examiner shall set forth, in the form of a recommendation, his findings of facts and conclusions. The examiner's recommendation shall be forwarded to the Commission. At least three members of the Commission shall review the record accumulated and assembled by the examiner and shall, within 30 days after the receipt of the recommendation, by majority vote, adopt, modify or reject it. The reviewing commissioners may also remand the grievance or complaint to the hearing examiner, or another examiner, for further proceedings. Disposition thereafter shall be in accordance with the types of disposition set forth in G.S. 148-106. (1973, c. 1307, s. 1.)

Cited in Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

§ 148-108. Access to documentary evidence; subpoenas; oaths and affirmations. — The Commission, Executive Director, commissioner or examiner, with the approval of the Secretary of Correction, shall at all reasonable times have access to, for the purposes of examination, and the right to copy, any documentary evidence of any person or institution being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The presiding commissioner or examiner at a hearing may administer oaths and affirmations. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation. — The complaining inmate shall have the right to appear at a hearing before the Commission or examiner and shall have the opportunity to call a witness, or a reasonable number of witnesses, depending upon the circumstances and the nature of the complaint, subject to the discretion of the Commission or examiner as to the relevancy of the testimony, questions and the number of witnesses sought to be called. The inmate shall have a reasonable opportunity to question any witnesses who testify at the hearing. Such rights of the inmate shall not be unreasonably withheld or restricted by the Commission or examiner. The inmate may, if he wishes, be represented by an employee of the Department of Correction. The rules of evidence as applied in the superior and district court divisions of the General Court of Justice need not be followed. (1973, c. 1307, s. 1.)

§ 148-110. Record of complaints. — A record shall be kept of all complaints and the dispositions thereof. (1973, c. 1307, s. 1.)

§ 148-111. Conduct of hearing at institutions. — For the performance of its duties, the Commission or examiner shall conduct hearings at the facilities under the supervision and control of the Secretary of Correction. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

§ 148-112. Rules and regulations. — The Commission shall have the power to adopt rules and regulations for the conduct of its proceedings as provided for in this Article. (1973, c. 1307, s. 1.)

§ 148-113. Judicial review. — No court shall entertain an inmate's grievance or complaint within the jurisdiction of the Inmate Grievance Commission unless and until the complainant has exhausted the remedies provided in this section. Upon the final decision of the Secretary of Correction, the complainant shall be entitled to judicial review thereof. Proceedings for review shall be instituted in the General Court of Justice of Wake County, Superior Court Division. Review by the court shall be on the record of the proceedings before the Commission and the Secretary's order, if any, pursuant to such proceedings and shall be limited to a determination of whether there was a substantial basis to support the action or ruling of the Secretary and whether there was a violation of any right of the inmate protected by federal or State constitutional requirements or laws. No judicial review order or judgment provided for in this section shall have the effect of res judicata or collateral estoppel in any action brought by an inmate in a United States District Court. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10, effective July 1, 1974, "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

Chapter 149.

State Song and Toast.

Sec.
149-1. "The Old North State."

§ 149-1. "The Old North State". — The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! The good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region on this side of Heaven),
Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1; 1973, c. 1446, s. 16.)

Editor's Note. — The 1973 amendment corrected an error in the Replacement Volume by capitalizing the word "Old" in the line "Hurrah! Hurrah! The good Old North State!"

Chapter 150.

Uniform Revocation of Licenses.

§§ 150-1 to 150-34: Repealed by Session Laws 1973, c. 1331, effective February 1, 1976.

Cross References. — For provisions as to administrative hearings effective Feb. 1, 1976, see §§ 150A-23 through 150A-37. As to judicial review of administrative decisions, see §§ 150A-43 through 150A-52, effective Feb. 1, 1976.

As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 4, provides that the act shall not affect any pending administrative hearings.

Chapter 150A.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.
150A-1. Scope and policy.
150A-2. Definitions.
150A-3. Special provisions on licensing.
150A-4 to 150A-8. [Reserved.]

Article 2.

Rule Making.

150A-9. Minimum procedural requirements.
150A-10. Definition.
150A-11. Special requirements.
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150A-18 to 150A-22. [Reserved.]

Article 3.

Administrative Hearings.

150A-23. Hearing required; notice; intervention.
150A-24. Venue of hearing.
150A-25. Conduct of hearing; answer.
150A-26. Consolidation.
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150A-28. Depositions and discovery.
150A-29. Rules of evidence.
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150A-31. Stipulations.
150A-32. Designation of hearing officer.
150A-33. Powers of hearing officer.
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150A-35. No ex parte communication; exceptions.
150A-36. Final agency decision.
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Sec.
150A-38 to 150A-42. [Reserved.]

Article 4.

Judicial Review.

150A-43. Right to judicial review.
150A-44. Right to judicial intervention when agency unreasonably delays decision.
150A-45. Manner of seeking review; time for filing petition; waiver.
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150A-47. Record filed by agency with clerk of superior court; contents of record; costs.
150A-48. Stay of board order.
150A-49. Procedure for taking newly discovered evidence.
150A-50. Review by court without jury on the record.
150A-51. Scope of review; power of court in disposing of case.
150A-52. Appeal to appellate division; obtaining stay of court's decision.
150A-53 to 150A-57. [Reserved.]

Article 5.

Publication of Administrative Rules.

150A-58. Short title and definition.
150A-59. Filing of rules.
150A-60. Form of rules.
150A-61. Authority of Attorney General to revise form.
150A-62. Public inspection and notification of current and replaced rules.
150A-63. Publication of rules.
150A-64. Judicial and official notice.

Editor's Note. — Session Laws 1973, c. 1331, s. 4, makes this Chapter effective on and after July 1, 1975, and provides that it shall not affect any pending administrative hearings. Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of this Chapter from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 3, provides: "All references in the General Statutes to a section of Chapter 150 of the General Statutes not contained in this act and all references in the General Statutes to Article 18 of Chapter 143 or any of the sections contained therein (143-195 — 143-198.1) or to Article 33 of Chapter 143 or any of the sections contained therein (143-306 — 143-316) are hereby amended to read 'Chapter 150[A] of the General Statutes.' "

ARTICLE 1.

General Provisions.

§ 150A-1. Scope and policy. — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; the Department of Correction; the Commission of Youth Services; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes or the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final agency decisions, shall apply to the University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but the University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4.)

Editor's Note. — The first 1975 amendment added the second paragraph of subsection (a).

The second 1975 amendment, effective July 1, 1975, substituted "Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes" for "Department of Motor Vehicles" in the third sentence of the first paragraph of subsection (a).

The third 1975 amendment, effective Feb. 1, 1976, inserted "the Department of Correction" in the second sentence of the first paragraph of subsection (a).

The fourth 1975 amendment, effective July 1, 1975, inserted "the Commission of Youth Services" in the second sentence of the first paragraph of subsection (a).

Applicability of Chapter to State Personnel Commission. — See Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

Cited in Nantz v. Employment Security Comm'n, 290 N.C. 473, 226 S.E.2d 340 (1976); Nantz v. Employment Security Comm'n, 28 N.C. App. 626, 222 S.E.2d 474 (1976).

§ 150A-2. Definitions. — As used in this Chapter,

(1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Contested case" means any agency proceeding, by whatever name called, wherein the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Contested cases include, but are not limited to proceedings involving rate-making, price-fixing and licensing. Contested cases shall not be deemed to include rule making, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) "Effective" means that a valid rule has been filed as required by this Chapter. A rule which is effective is enforceable to the extent permitted by law.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in a trade, occupation,

or other activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending or revoking a license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(5) "Party" means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the hearing agency where appropriate; provided, this shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.

(6) "Person aggrieved" means any person, firm, corporation, or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it is made effective. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "means" for "is" near the beginning of the first sentence of subdivision (2), substituted "a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing" for "specific parties are to be determined" at the end of that sentence, and substituted "declaratory rulings, or the award or denial of a scholarship or grant" for "and declaratory rulings" at the end of the third sentence of subdivision (2). The amendment also added the second sentence of subdivision (4).

The 1977 amendment, effective Oct. 1, 1977, added subdivisions (2a) and (9). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

Cited in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-3. Special provisions on licensing. — (a) When a licensee makes timely and sufficient application for renewal of a license or a new license (including the payment of any required license fee) with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending such license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, an agency shall give notice to the licensee, pursuant to the provisions of G.S. 150A-23(c), of alleged facts or alleged conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§§ 150A-4 to 150A-8: Reserved for future codification purposes.

ARTICLE 2.

Rule Making.

§ 150A-9. Minimum procedural requirements. — It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in G.S. 150A-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any agency thereof. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article. (1973, c. 1331, s. 1.)

Substantial compliance under this section, among other things, requires notice and the opportunity to be heard, as provided by § 150A-12, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-10. Definition. — As used in this Article, "rule" means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(1) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
(2) Declaratory rulings issued pursuant to G.S. 150A-17;
(3) Intraagency memoranda, except those to agency staff which implement or prescribe law or policy;
(4) Statements of policy or interpretations that are made in the decision of a contested case;
(5) Rules concerning the use or creation of public roads or facilities which are communicated to the public by use of signs or symbols;
(6) Interpretative rules and general statements of policy of the agency. (1973, c. 1331, s. 1.)

§ 150A-11. Special requirements. — In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.
(2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.
(3) With respect to all final orders, decisions, and opinions made after February 1, 1976, make available for public inspection together with all materials that were before the deciding officers at the time the final order, decision, or opinion was made, except materials properly for good cause held confidential. (1973, c. 1331, s. 1.)

§ 150A-12. Procedure for adoption of rules. — (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The

notice shall be given within the time prescribed by any applicable statute, or if none then at least 10 days before the public hearing and at least 20 days before the adoption, amendment, or repeal of the rule. The notice shall include:

(1) A reference to the statutory authority under which the action is proposed.

(2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.

(3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(b) The agency shall transmit copies of the notice to the Attorney General, the Director of Research of the Legislative Services Commission and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) The agency shall publish the notice as prescribed in any applicable statute or, if none, shall publish the notice in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications. If the persons likely to be affected by the proposed rule are unorganized or diffuse in character and location, then the agency shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

(d) The public hearing shall comply with any applicable statute but is not subject to the provisions of this Chapter governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(e) The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption.

(f) No rule-making hearing is required for the adoption, amendment or repeal of a rule which solely describes the organization of the agency or describes forms or instructions used by an agency. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2.)

Cross Reference. — As to review of administrative rules, see § 120-30.24 et seq.

Editor's Note. — The 1975, 2nd Sess., amendment added subsection (f).

The 1977 amendment, effective Oct. 1, 1977, inserted "the Director of Research of the Legislative Services Commission" in the first sentence of subsection (b). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

Substantial compliance under § 150A-9, among other things, requires notice and the opportunity to be heard, as provided by this section, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

Notice Provisions of Other Statutes Control over This Section. — See Opinion of Attorney General to Mr. Gary K. Berman, Administrative Procedures Office, Department of Human Resources, 45 N.C.A.G. 217 (1976).

§ 150A-13. Emergency rules. — If any agency finds that an imminent peril to the public health, safety, or welfare requires adoption, amendment, or repeal of a rule, without notice or upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or

upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. This rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under G.S. 150A-12 is not precluded. (1973, c. 1331, s. 1.)

§ 150A-14. Adoption by reference. — An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "any other agency of this State or any agency of the United States" for "an agency of this State or of the United States" in the first sentence.

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

§ 150A-15. Continuation of rules. — When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency. (1973, c. 1331, s. 1.)

Applied in State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

§ 150A-16. Petition for adoption of rules. — Any person may petition an agency requesting the promulgation, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with G.S. 150A-12 and G.S. 150A-13. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review, which shall be limited to questions of abuse of discretion. (1973, c. 1331, s. 1.)

§ 150A-17. Declaratory rulings. — On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review. (1973, c. 1331, s. 1.)

§§ 150A-18 to 150A-22: Reserved for future codification purposes.

ARTICLE 3.

Administrative Hearings.

§ 150A-23. Hearing required; notice; intervention. — (a) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(d) Any person may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. In addition, any person interested in an agency proceeding may intervene and participate in that proceeding to the extent deemed appropriate by the hearing agency.

(e) All hearings under this Chapter shall be open to the public. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "certified mail" for "registered mail" in three places in subsection (c).

For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

Stated in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-24. Venue of hearing. — When a hearing on a contested case is conducted by a hearing officer or less than a majority of an agency, the hearing shall be conducted in a county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence.

If the hearing is conducted by a majority of the agency, then the hearing shall be held in the county where the agency maintains its principal office.

When a different county would promote the ends of justice or better serve the convenience of witnesses, the agency hearing the case may in its discretion designate another county. In any case, however, the person whose property or

rights are involved and the agency hearing the case may agree that the hearing is to be held in some other county.

The person whose property or rights are the subject matter of the hearing shall not be deemed to have waived any objection to venue merely by proceeding in the hearing. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-25. Conduct of hearing; answer. — (a) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-26. Consolidation. — When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings ..." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-27. Subpoena. — An agency is hereby authorized to issue subpoenas upon its own motion or upon a written request. When such written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if, upon a hearing the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 66.)

Editor's Note. — The 1975, 2nd Sess., amendment added the last two sentences. For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings

. . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

One of the purposes of a subpoena duces tecum is to insure that documents are described with sufficient particularity and with such definiteness that they can be identified without prolonged or extensive search. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

§ 150A-28. Depositions and discovery. — (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. An agency authorized to adjudicate contested cases may adopt rules providing for discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party. (1973, c. 1331, s. 1.)

§ 150A-29. Rules of evidence. — (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150A-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-30. Official notice. — Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-31. Stipulations. — (a) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1.)

§ 150A-32. Designation of hearing officer. — (a) An agency, one or more members of the agency, a person or group of persons designated by statute or one or more hearing officers designated and authorized by the agency to handle contested cases, shall be hearing officers in contested cases. Hearings shall be conducted in an impartial manner.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-33. Powers of hearing officer. — A hearing officer may:

(1) Administer oaths and affirmations;
(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
(3) Provide for the taking of testimony by deposition;
(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
(6) Apply to the General Court of Justice, Superior Court Division, during or subsequent to a hearing for an order to show cause why any person should not be held in contempt of the agency and its processes, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-34. Proposal for decision. — (a) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case, the decision shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the officials who are to make the decision.

(b) The proposal for decision shall contain proposed findings of fact and proposed conclusions of law. This proposal for decision shall be prepared by a person who conducted the hearing unless he becomes unavailable to the agency. If no such person is available, the findings may be prepared by one who has read the record, unless demeanor of witnesses is a factor. If demeanor is a factor, the portions of the hearing involving demeanor shall be held again, or the case shall be dismissed without prejudice.

(c) The parties, by written stipulation or at the hearing, may waive compliance with this section. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-35. No ex parte communication; exceptions. — Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party or his representative, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis, or rate making in a contested case insofar as the case involves rate making or financial practices or conditions. (1973, c. 1331, s. 1.)

§ 150A-36. Final agency decision. — A final decision or order of an agency in a contested case shall be made, after review of the official record as defined in G.S. 150A-37(a), in writing and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a) or 150A-30 or 150A-31. A copy of the decision or order shall be served upon each party personally or by certified mail and a copy furnished to his attorney of record. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "certified mail" for "registered mail" in the last sentence.

§ 150A-37. Official record. — (a) An agency shall prepare an official record of a hearing which shall include:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1973, c. 1331, s. 1.)

§§ 150A-38 to 150A-42: Reserved for future codification purposes.

ARTICLE 4.

Judicial Review.

§ 150A-43. Right to judicial review. — Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

Agency Decisions Reviewable under Section. — Judicial review of an order of the State Board of Alcoholic Control suspending a retail beer permit is governed by this section. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Any person aggrieved by a final decision of the Property Tax Commission, and who has exhausted all administrative remedies available to him, is entitled to judicial review under this section. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

The administrative decisions of the Property Tax Commission, whether with respect to the schedule of values or the appraisal of property, are always subject to judicial review after administrative procedures have been exhausted. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

Petitioners were aggrieved persons when the Secretary of the Department of Administration ordered them to forfeit their $316,600 bid bond or be subject to liability for twice that amount. In re Metric Constructors, Inc., 31 N.C. App. 88, 228 S.E.2d 533 (1976) (decided under former § 143-307).

Upon review pursuant to this section, the "whole record" test is applicable, and the decision of the State Board of Alcoholic Control may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported "by competent, material and substantial evidence in view of the entire record as submitted." Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Quoted in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-44. Right to judicial intervention when agency unreasonably delays decision. — Unreasonable delay on the part of any agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1973, c. 1331, s. 1.)

The right under this section may be asserted to prevent unreasonable delay in reaching a final agency decision. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-45. Manner of seeking review; time for filing petition; waiver. — In order to obtain judicial review of a final agency decision under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a local agency or local board and appealed to the State board, the petition may be filed in the superior court of the county where the original determination was made. Such petition may be filed at any time after final decision, but must

be filed not later than 30 days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. (1973, c. 1331, s. 1.)

Hearing under § 20-25 Precluded. — A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to this section and may not obtain a hearing under § 20-25 in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

§ 150A-46. Contents of petition; copies served on all parties; intervention. — The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1.)

§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs. — Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1.)

§ 150A-48. Stay of board order. — At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the agency decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

This section must be construed in pari materia with the rest of Article 4, Chapter 150A, entitled "Judicial Review," and particularly § 150A-43 which states that "any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article." Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

This section was meant to entitle the aggrieved person to a stay order only after the final agency decision and either before or after the initiation of judicial review. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-49. Procedure for taking newly discovered evidence. — At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be taken. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-50. Review by court without jury on the record. — The review of agency decisions under this Chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo. (1973, c. 1331, s. 1.)

§ 150A-51. Scope of review; power of court in disposing of case. — The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or
(2) In excess of the statutory authority or jurisdiction of the agency; or
(3) Made upon unlawful procedure; or
(4) Affected by other error of law; or
(5) Unsupported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

The standard of judicial review set forth in subdivision (5) is known as the "whole record" test and must be distinguished from both de novo review and the "any competent evidence" standard of review. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977) (decided under former § 143-315).

Application of "Whole Record" Test. — The "whole record" test set forth in subdivision (5) does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977) (decided under former § 143-315).

On the other hand, the "whole record" rule set forth in subdivision (5) requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977) (decided under former § 143-315).

No court can weigh evidence presented to the State board and substitute its evaluation of the evidence for that of the board. In re

Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

Upon a review of an order of the Property Tax Commission the superior court is without authority to make findings at variance with the findings of the board when the findings of the board are supported by competent, material and substantial evidence. In re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

Review of Teacher Dismissal Proceedings. — The general guidelines for judicial review contained in subdivision (5) are modified by the evidentiary rules of teacher dismissal proceedings found in § 115-142(j)(2). Although the reviewing superior court must still look for substantial evidence in the record as a whole which is competent and material, it may not exclude testimony from its consideration merely because it would otherwise violate a rule of evidence. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977) (decided under former § 143-315).

Under the whole record rule of subdivision (5), a trial judge reviewing a school board decision under § 115-142 must not only consider the complete testimony of all the witnesses, he must also consider the panel report of the Professional Review Committee. Under § 115-142(1)(2) the report of the panel is "deemed to be competent evidence," and when it is introduced, it becomes part of the record. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977) (decided under former § 143-315).

§ 150A-52. Appeal to appellate division; obtaining stay of court's decision. — Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the agency decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1331, s. 1.)

§§ 150A-53 to 150A-57: Reserved for future codification purposes.

ARTICLE 5.

Publication of Administrative Rules.

§ 150A-58. Short title and definition. — (a) This Article may be cited as "The Registration of State Administrative Rules Act."

(b) As used in this Article, "rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

"Rule" shall not include:

(1) Rules, procedures, or regulations which relate only to the internal management of any agency;

(2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;

(3) Dispositions of any specific issue or matter by the process of adjudication; and

(4) Orders establishing or fixing rates or tariffs.

(c) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government; any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly. (1973, c. 1331, s. 1; 1977, c. 915, s. 7.)

Editor's Note. — The 1977 amendment, effective Oct. 1, 1977, added subsection (c). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

§ 150A-59. Filing of rules. — (a) Rules adopted by any agency on or after February 1, 1976, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after January 31, 1976, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. (1973, c. 1331, s. 1; 1975, c. 69, ss. 1, 2, 5, 6.)

Editor's Note. — The 1975 amendment substituted "February 1, 1976" for "July 1, 1975" in the first sentence of subsection (a) and "January 31, 1976" for "June 30, 1975" in subsection (c).

Rules Effective before January 31, 1976, Are Not Enforceable until Filed. — See Opinion of Attorney General to Mr. Sam H. Long, III, Legal Counsel to the Governor, 45 N.C.A.G. 207 (1976).

Stated in American Guarantee & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-60. Form of rules. — In order to be acceptable for filing, the rule must:

(1) Cite the statute or other authority pursuant to which the rule is adopted;
(2) Bear a certification by the agency of its adoption;
(3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
(4) Be in the physical form specified by the Attorney General. (1973, c. 1331, s. 1.)

§ 150A-61. Authority of Attorney General to revise form. — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

(1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
(2) To provide or revise titles or catchlines;
(3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
(4) To rearrange definitions and lists; and
(5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency. (1973, c. 1331, s. 1.)

Stated in American Guarantee & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-62. Public inspection and notification of current and replaced rules. — (a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

(1) Shall publish the rule as prescribed in any applicable statute; and

(2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule. The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150A-61."

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public. (1973, c. 1331, s. 1.)

Cited in American Guarantee & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-63. Publication of rules. — (a) The Attorney General shall compile, index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after February 1, 1976, the Attorney General shall publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General.

(e) Copies of the compilation, supplements, and recompilations shall be distributed by the Attorney General as soon after publication as practicable, without charge, to the following officials and departments, in the following quantities:

(1) One copy to each clerk of the superior court, to be maintained in the county law library in counties having a county law library, or in the clerk's office available for public inspection in counties having no county law library; one copy to each judge of the district and superior courts; one copy to the Chief Judge and each associate justice of the North Carolina Supreme Court; one copy to the Chief Judge and each associate judge of the North Carolina Court of Appeals; one copy each to the Clerk of the Supreme Court and the Clerk of the Court of

Appeals; one copy to each district attorney; one copy to the United States Circuit Court of Appeals, Fourth Circuit; one copy to each Judge of Federal District Court who resides in North Carolina; one copy to the Supreme Court of the United States; and one copy to the United States Department of Justice.

(2) Fifteen copies to the officer of the Legislative Services Commission of North Carolina to be made available by him to the members of the General Assembly.

(3) As requested by each major department created by the Executive Organization Acts of 1971 and 1973, the office of the Governor, Lieutenant Governor, and the Board of Governors of the University, to a limit of 20 copies each. Distribution and maintenance shall be determined by the requesting official or department. Requests shall be limited to need determined by the Attorney General based upon information supplied to him by the requesting official or department.

(4) Four copies each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals.

(f) The Attorney General shall make available copies of the compilation, and of all supplements, to other persons at a price determined by him to cover publication and mailing costs. (1973, c. 1331, s. 1; 1975, c. 69, ss. 3, 7; c. 688, s. 1.)

Editor's Note. — The first 1975 amendment substituted "February 1, 1976" for "July 1, 1975" near the beginning of the first sentence of subsection (d).

The second 1975 amendment added subsections (e) and (f).

Session Laws 1975, c. 688, s. 2, provides: "This act shall become effective on the same date as Chapter 1331 of the 1973 Session Laws becomes effective." The July 1, 1975, effective date of c. 1331 was amended to Feb. 1, 1976, by Session Laws 1975, c. 69, s. 4.

Cited in American Guarantee & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-64. Judicial and official notice. — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article. (1973, c. 1331, s. 1.)

Chapter 152.

Coroners.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases.

Local Modification. — Alamance (office of coroner abolished): 1975, c. 577; Anson (office of coroner abolished): 1975, c. 270; Craven, Davidson (office of coroner abolished): 1973, c. 1049; Davie (office of coroner abolished): 1973, c. 1146; Franklin (office of coroner abolished): 1975, c. 333; Gaston (assistant coroner): 1973, c. 1371; 1975, c. 201; Northampton, Orange, Pender and Perquimans (office of coroner abolished): 1973, c. 1146; Stokes (office of coroner abolished): 1977, c. 348; Tyrrell (office of coroner abolished): 1975, c. 96.

By virtue of Session Laws 1975, c. 63, Union should be stricken from the Replacement Volume.

§ 152-5. Fees of coroners.

Local Modification. — Halifax: 1973, c. 924, amending 1953, c. 362.

Chapter 153A.

Counties.

Article 3.

Boundaries.

Sec.
153A-21. [Repealed.]

Article 4.

Form of Government.

Part 1. General Provisions.

153A-29. [Repealed.]

Part 4. Modification in the Structure of the Board of Commissioners.

153A-60. Initiation of alterations by resolution.
153A-63. Filing copy of resolution.

Article 5.

Administration.

Part 4. Personnel.

153A-97. Defense of officers, employees and others.
153A-98. Privacy of employee personnel records.
153A-99, 153A-100. [Reserved.]

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

153A-103. Number of employees in offices of sheriff and register of deeds.

Article 6.

Delegation and Exercise of the General Police Power.

153A-131. Possession or harboring of dangerous animals.
153A-132.1. To provide for the removal and disposal of trash, garbage, etc.
153A-138. Registration of mobile homes, house trailers, etc.
153A-139 to 153A-145. [Reserved.]

Article 7.

Taxation.

153A-149. Property taxes; authorized purposes; rate limitation.

Article 8.

County Property.

Part 1. Acquisition of Property.

153A-159. Power of eminent domain conferred.

Article 9.

Special Assessments.

153A-185. Authority to make special assessments.

Sec.
153A-205. Improvements to subdivision and residential streets.
153A-206 to 153A-210. [Reserved.]

Article 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

153A-221.1. Standards and inspections.
153A-225. Medical care of prisoners.
153A-225.1. Duty of custodial personnel when prisoners are unconscious or semiconscious.
153A-229. Jailer's report of jailed defendants.
153A-230 to 153A-232. [Reserved.]

Article 11.

Fire Protection.

153A-233. Fire-fighting and prevention services.

Article 12.

Roads and Bridges.

153A-241. Closing public roads or easements.
153A-242. Regulation or prohibition of fishing from bridges.

Article 13.

Health and Social Services.

Part 1. Health Services.

153A-248. Health-related appropriations.

Article 14.

Libraries.

153A-267. Qualifications of chief librarian; library employees.

Article 15.

Public Enterprises.

Part 1. General Provisions.

153A-274. "Public enterprise" defined.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

153A-291. Cooperation between the Department of Transportation and any county in establishing or operating solid waste disposal facilities.

Article 16.

County Service Districts.

Sec.

153A-301. Purposes for which districts may be established.

Article 18.

Planning and Regulation of Development.

Part 2. Subdivision Regulation.

153A-331. Contents and requirements of ordinance.

153A-334. Penalties for transferring lots in unapproved subdivisions.

Part 4. Building Inspection.

153A-351. Inspection department; certification of electrical inspectors.

Sec.

153A-351.1. Qualifications of inspectors.

Part 5. Community Development.

153A-376. Community development programs and activities.

153A-377. Acquisition and disposition of property for redevelopment.

153A-378 to 153A-390. [Reserved.]

Article 23.

Miscellaneous Provisions.

153A-445. Miscellaneous powers found in Chapter 160A.

153A-446. County may offer reward for information as to persons damaging county property.

ARTICLE 2.

Corporate Powers.

§ 153A-11. Corporate powers.

Editor's Note. — For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Stated in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

ARTICLE 3.

Boundaries.

§ 153A-21: Repealed by Session Laws 1973, c. 884, effective February 1, 1974.

Editor's Note. — Session Laws 1975, c. 389, applicable only to Robeson County, reenacted this section.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-29: Repealed by Session Laws 1975, c. 514, s. 17, effective July 1, 1975.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-40. Regular and special meetings.

Stated in News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-60. Initiation of alterations by resolution. — The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

(1) Briefly but completely describe the proposed alterations;

(2) Prescribe the manner of transition from the existing structure to the altered structure;

(3) Define the electoral districts, if any, and apportion the members among the districts;

(4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held at the same time as any other state, county or municipal primary, election, special election or referendum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county.

Upon its adoption, the resolution shall be published in full. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1; 1977, c. 382.)

Editor's Note. — The 1977 amendment rewrote subdivision (4).

§ 153A-63. Filing copy of resolution. — A copy of a resolution approved pursuant to this Part shall be filed and indexed in the ordinance book required by G.S. 153A-48. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1; 1975, c. 19, s. 60.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "G.S. 153A-48" for "G.S. 153A-47" at the end of the section.

ARTICLE 5.

Administration.

Part 4. Personnel.

§ 153A-97. Defense of officers, employees and others. — A county may, pursuant to G.S. 160A-167, provide for the defense of any county officer or employee, including the county board of elections or any county election official, and of any member of a volunteer fire department or rescue squad which receives public funds. (1957, c. 436; 1973, c. 822, s. 1; 1977, c. 307, s. 1.)

Editor's Note. — The 1977 amendment added "and of any member of a volunteer fire department or rescue squad which receives public funds" at the end of the section.

§ 153A-98. Privacy of employee personnel records. — (a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files maintained by a county are subject to inspection and may be disclosed only as provided by this section.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. The board of county commissioners shall determine in what form and

by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) Any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by this section, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1.)

Editor's Note. — Session Laws 1975, c. 701, s. 3, makes the act effective Jan. 1, 1976.

§§ 153A-99, 153A-100: Reserved for future codification purposes.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-103. Number of employees in offices of sheriff and register of deeds. — Subject to the limitations set forth below, the board of commissioners may fix the number of salaried employees in the offices of the sheriff and the register of deeds. In exercising the authority granted by this section, the board of commissioners is subject to the following limitations:

(1) Each sheriff and register of deeds elected by the people has the exclusive right to hire, discharge, and supervise the employees in his office. However, the board of commissioners must approve the appointment by such an officer of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.

(2) Each sheriff and register of deeds elected by the people is entitled to at least one deputy, who shall be reasonably compensated by the county.

Notwithstanding the foregoing provisions of this section, approval of the board of commissioners is not required for the reappointment or continued employment of a near relative of a sheriff or register of deeds who was not related to the appointing officer at the time of initial appointment. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1; 1973, c. 822, s. 1; 1977, c. 36.)

Editor's Note. — The 1977 amendment added the last paragraph.

Cited in Cline v. Brown, 24 N.C. App. 209, 210 S.E.2d 446 (1974).

Article 6.

Delegation and Exercise of the General Police Power.

§ 153A-122. Territorial jurisdiction of county ordinances.

A City Is Not Required to Approve by Resolution County Parking Ordinances Pertaining to County Property Located within the City. — See opinion of Attorney General to Mr. F.L. Carr, 43 N.C.A.G. 409 (1974).

§ 153A-129. Firearms.

Local Modification. — Bertie: 1975, c. 289.

§ 153A-131. Possession or harboring of dangerous animals. — A county may by ordinance regulate, restrict, or prohibit the possession or harboring of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1973, c. 822, s. 1; 1977, c. 407, s. 1.)

Cross Reference. — As to the power of cities to regulate, restrict or prohibit the possession or harboring of dangerous animals, see § 160A-187.

Editor's Note. — The 1977 amendment substituted "animals which are" for "wild animals" in the first sentence, deleted "or offensive to the senses" from the end of the first sentence, and added the second sentence.

§ 153A-132.1. To provide for the removal and disposal of trash, garbage, etc. — The board of county commissioners of any county is hereby authorized to enact ordinances governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. An ordinance adopted pursuant hereto may make it unlawful to place, discard, dispose, leave or dump any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever upon a street or highway located within that county or upon property owned or operated by the county unless such trash, debris, garbage, litter, discarded cans or receptacles or any waste matter is placed in a designated location or container for removal by a specific garbage or trash service collector.

Boards of county commissioners may also provide by ordinance enacted pursuant to this section, that the placing, discarding, disposing, leaving or dumping of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense, and that a person in violation of the ordinance may be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 952.)

§ 153A-138. Registration of mobile homes, house trailers, etc. — A county may by ordinance provide for the annual registration of mobile homes, house trailers and similar vehicular equipment designed for use as living or business quarters and for the display of a sticker or other device thereon as evidence of such registration. No fee shall be charged for such registration. (1975, c. 693.)

§§ 153A-139 to 153A-145: Reserved for future codification purposes.

ARTICLE 7.

Taxation.

§ 153A-149. Property taxes; authorized purposes; rate limitation.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents ($1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.

(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.

(3) Air Pollution. — To maintain and administer air pollution control programs.

(4) Airports. — To establish and maintain airports and related aeronautical facilities.

(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(6) Animal Protection and Control. — To provide animal protection and control programs.
(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
(8) Cemeteries. — To provide for cemeteries.
(9) Civil Preparedness. — To provide for civil preparedness programs.
(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
(11) Fire Protection. — To provide fire protection services and fire prevention programs.
(12) Forest Protection. — To provide forest management and protection programs.
(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
(14) Historic Preservation. — To undertake historic preservation programs and projects.
(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.
(16) Human Relations. — To undertake human relations programs.
(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.
(19) Libraries. — To establish and maintain public libraries.
(20) Mapping. — To provide for mapping the lands of the county.
(21) Medical Examiner. — To provide for the county medical examiner or coroner.
(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the county or area mental health department.
(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
(27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.
(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.
(29) Sewage. — To provide sewage collection and treatment services.
(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not

required by Chapters 108 and 111 of the General Statutes, and by establishing and maintaining a county home.

(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.

(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction, (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall . . . . . County be authorized to levy annually a property tax at an effective rate not in excess of . . . . . cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of . . . . . ?

(2) Shall . . . . . County be authorized to levy annually a property tax at a rate not in excess of that which will produce $. . . . . for the purpose of . . . . . .

(3) Shall . . . . . County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of . . . . . ?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity

of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(1973, c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3.)

Editor's Note. —

The first 1973 amendment added subdivision (37) to subsection (c).

The second 1973 amendment substituted "subsection (c)" for "subsection (d)" near the end of the last paragraph of subsection (d).

The 1975 amendment substituted "Preparedness" for "Defense" and "preparedness" for "defense" in subdivision (c)(9).

The first 1977 amendment substituted "Article 18" for "Article 17" in subdivision (c)(26).

The second 1977 amendment added subdivision (10a) to subsection (c).

As the rest of the section was not changed by the amendments, only subsections (c) and (d) are set out.

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-159. Power of eminent domain conferred. — In addition to any power conferred by any other general law or local act, each county possesses the power of eminent domain and may acquire by condemnation the fee or any lesser interest in property, either inside or outside the county, for the following purposes:

(1) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 153A-274.
(2) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.
(3) Constructing, enlarging, or improving hospital facilities.
(4) Constructing, enlarging, or improving library facilities.
(5) Constructing, enlarging, or improving courthouses, jails, office buildings, fire stations, and other buildings for use by the county or any board, commission, or agency thereof.
(6) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities.

The power to acquire property by condemnation does not depend on any prior effort to acquire the same property by grant or purchase, nor is the power to negotiate for the grant or purchase of property impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a county may in its discretion use the procedures of Chapter 40, Article 2; or the procedures of Chapter 160A, Article 11; or the procedures of any other general law or local act applicable to the county. (1961, c. 1001, s. 1; 1965, c. 934; 1973, c. 822, s. 1; 1975, c. 265, s. 1.)

Local Modification. — Cabarrus: 1975, c. 21; Union: 1977, c. 293.

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added subdivision (6) to the first paragraph.

Session Laws 1975, c. 265, s. 3, provides that the act shall not affect pending litigation.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property.

Commissioners Act as Fiduciaries or Trustees. — Boards of commissioners, in selling or leasing real property belonging to the county, are acting as fiduciaries or trustees for the taxpayers and citizens of the county and must exercise their best judgment and skill, as reasonable men, to obtain the best price for the land. Puett v. Gaston County, 19 N.C. App. 231, 198 S.E.2d 440 (1973).

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments. — A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems;

(3) Acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works;

(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1.)

Editor's Note. — The 1975 amendment added subdivision (4).

§ 153A-205. Improvements to subdivision and residential streets. — (a) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets that are a part of the State maintained system located in the county and outside of a city and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(b) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and

residential streets located in the county and outside of a city in order to bring those streets up to the standards of the Secondary Roads Council so that they may become a part of the State maintained system and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(c) Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

(d) This section is intended to provide a means of assisting in financing improvements to subdivision and residential streets that are on the State highway system or that will, as a result of the improvements, become a part of the system. By financing improvements under this section, a county does not thereby acquire or assume any responsibility for the street or streets involved, and a county has no liability arising from the construction of such an improvement or the maintenance of such a street. Nothing in this section shall be construed to alter the conditions and procedures under which State system streets or other public streets are transferred to municipal street systems pursuant to G.S. 136-66.1 and 136-66.2 upon annexation by, or incorporation of, a municipality. (1975, c. 487, s. 2; c. 716, s. 7.)

Editor's Note. — The 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in subsections (a) and (b).

§§ 153A-206 to 153A-210: Reserved for future codification purposes.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-220. Jail and detention services.

Cross Reference. — As to juvenile detention services, see § 134-35 et seq.

§ 153A-221. Minimum standards.

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

§ 153A-221.1. Standards and inspections. — The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the state-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134-37.

The Secretary of Human Resources shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Human Resources shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2.)

Editor's Note. — Session Laws 1973, c. 1230, s. 4, provides that the act shall become effective July 1, 1975.

The 1973 amendment substituted "Department of Correction" for "Department of Youth Development" near the end of the first paragraph.

The 1975 amendment substituted "five calendar days" for "72 hours" near the beginning of the first sentence of the last paragraph.

§ 153A-225. Medical care of prisoners. — (a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director, upon a determination that the plan is adequate to protect the health and welfare of the prisoners, and must be adopted by the governing body.

(1973, c. 1140, s. 3.)

Editor's Note. —

Session Laws 1973, c. 1140, s. 3, substituted, in subdivision (3) of subsection (a), "the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases" for "compliance with the requirements of G.S. 130-97 and G.S. 130-121."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

§ 153A-225.1. Duty of custodial personnel when prisoners are unconscious or semiconscious. — (a) Whenever a custodial officer of a local confinement facility takes custody of a prisoner who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition and unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the prisoner is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the prisoner suffers from diabetes, epilepsy, a cardiac condition or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the prisoner suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a custodial officer of a local confinement facility to make a reasonable effort to discover an emergency alert symbol as required by this section does not by itself establish negligence of the officer but may be considered along with other evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the prisoner in his custody.

(c) A prisoner who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.

(d) Repealed by Session Laws 1975, c. 818, s. 2. (1975, c. 306, s. 2; c. 818, s. 2.)

Editor's Note. — Session Laws 1975, c. 306, s. 3, makes the act effective Oct. 1, 1975.

The 1975 amendment repealed subsection (d), which stated: "Willful false representation of the existence of diabetes, epilepsy, a cardiac condition, or other disabling condition covered by this section, is punishable as provided in G.S. 14-223.1."

§ 153A-229. Jailer's report of jailed defendants. — A person having administrative control of a local confinement facility each week must file a report with the clerk of court listing the name and period of confinement of each person confined in that facility on Friday noon preceding submission of the report. (1973, c. 1286, s. 23.)

Editor's Note. — Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 153A-230 to 153A-232: Reserved for future codification purposes.

ARTICLE 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services. — A county may establish, organize, equip, support, and maintain a fire department; may prescribe the duties of the fire department; may provide financial assistance to incorporated volunteer fire departments; may contract for fire-fighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments; and may for these purposes appropriate funds not otherwise limited as to use by law. The county may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes. (1945, c. 244; 1973, c. 822, s. 1; 1977, c. 158.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, inserted "financial" and "or with one or more incorporated volunteer fire departments" in the first sentence and added the second sentence.

ARTICLE 12.

Roads and Bridges.

§ 153A-241. Closing public roads or easements. — A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause the resolution to be published once a week for four successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property

rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the first sentence.

§ 153A-242. Regulation or prohibition of fishing from bridges. — A county may by ordinance regulate or prohibit fishing from any bridge within the county and not within a city. In addition, the governing board of a city may by resolution permit a county to regulate or prohibit fishing from any bridge within the city. The city may by resolution withdraw its permission to the county ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the date the county receives this notice the county ordinance ceases to be applicable within the city. An ordinance adopted pursuant to this section shall provide for signs to be posted on each bridge affected, summarizing the regulation or prohibition pertaining to that bridge.

No person may fish from the drawspan of a regularly attended bridge, and no county may permit any person to do so.

The authority granted by this section is subject to the authority of the Department of Transportation to prohibit fishing from any bridge on the State highway system. (1971, c. 690, ss. 1, 6; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the last paragraph.

ARTICLE 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-248. Health-related appropriations. — (a) A county may appropriate revenues not otherwise limited as to use by law:

(1) To a licensed facility for the mentally retarded, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the facility is available to residents of the county. The facility need not be located within the county.

(2) To a sheltered workshop or other private, nonprofit, charitable organization offering work or training activities to the physically or mentally handicapped, and may otherwise assist such an organization.

(3) To an orthopedic hospital, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the hospital is available to residents of the county. The hospital need not be located within the county.

(b) The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the board of commissioners shall require that the recipient account for the appropriation at the close of the fiscal year. (1967, cc. 464, 1074; 1969, c. 802; 1973, c. 822, s. 1; 1977, c. 474.)

Editor's Note. — The 1977 amendment substituted "work or training activities" for "work and training activities" in subdivision (2) of subsection (a).

ARTICLE 14.

Libraries.

§ 153A-267. Qualifications of chief librarian; library employees. — (a) To be eligible for appointment and service as chief administrative officer of a library system (whether designated chief librarian, director of library services, or some other title), a person must have a professional librarian certificate issued by the Secretary of Cultural Resources, pursuant to G.S. 125-9, under regulations for certification of public librarian as established by the North Carolina Public Librarian Certification Commission pursuant to the provisions of G.S. 143B-67. (1975, c. 516.)

Editor's Note. —

The 1975 amendment substituted the language beginning "Secretary of Cultural Resources" and ending "Chapter 143B-67" for "the Public Librarian Certification Commission pursuant to the provisions of Chapter 125" at the end of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. "Public enterprise" defined. — As used in this Article, "public enterprise" includes:

(6) Public transportation systems. (1955, c. 370; 1957, c. 266, s. 3; 1961, c.

514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1.)

Editor's Note. — The 1973 amendment added subdivision (6).

The 1977 amendment rewrote subdivision (6), which formerly read "Bus lines and mass transit systems."

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (6) are set out.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-291. Cooperation between the Department of Transportation and any county in establishing or operating solid waste disposal facilities. — A county and the Department of Transportation may enter into an agreement under which the Department of Transportation will make available to the county the use of equipment and prison and other labor in order to establish or operate solid waste disposal facilities within the county. The county shall reimburse the Department of Transportation for the cost of providing the equipment and labor. The agreement shall specify the work to be done thereunder and shall set forth the basis for reimbursement. (1967, c. 707; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in three places.

§ 153A-292. County collection and disposal; tax levy.

County Ordinances Involving Sanitation May Not Be Less Stringent Than State Regulations Adopted pursuant to G.S. 130-166.18. — See opinion of Attorney General to Mr. R. Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

ARTICLE 16.

County Service Districts.

§ 153A-301. Purposes for which districts may be established. — The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works;
(2) Fire protection;
(3) Recreation;
(4) Sewage collection and disposal systems;
(5) Solid waste collection and disposal systems;
(6) Water supply and distribution systems;
(7) Ambulance and rescue. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375.)

Local Modification. — Gaston: 1977, c. 336.

Editor's Note. — The 1973 amendment added subdivision (7).

§ 153A-302. Definition of service districts.

Editor's Note. — Session Laws 1975, c. 849, s. 1, provides that subsection (d) is amended by adding at the end thereof the following: "Provided that any resolution adopted before August 1, 1975, may be effective as of July 1, 1975, if such resolution so provides." Section 2 of the act provides: "This act shall become effective upon ratification, and shall expire on Oct. 1, 1975, but such expiration shall not affect the validity of any service district established pursuant to this act."

§ 153A-305. Required provision or maintenance of services.

Local Modification. — Onslow: 1975, c. 757.

ARTICLE 18.

Planning and Regulation of Development.

Part 2. Subdivision Regulation.

§ 153A-331. Contents and requirements of ordinance. — A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice. A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning agency. For the authorization to reserve school sites to be effective, the board of commissioners or planning agency, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning agency shall immediately notify the board of education. That board shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning agency of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved

without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place. (1959, c. 1007; 1973, c. 822, s. 1; 1975, c. 231.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, added the last sentence of the first paragraph.

§ 153A-334. Penalties for transferring lots in unapproved subdivisions. — If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. (1959, c. 1007; 1973, c. 822, s. 1; 1977, c. 820, s. 1.)

Editor's Note. — The 1977 amendment rewrote the third sentence.

§ 153A-335. "Subdivision" defined.

Local Modification. — Cherokee: 1977, c. 253; Onslow: 1975, c. 105; Pamlico: 1977, c. 98; Rutherford: 1975, c. 263; 1977, c. 1.

Part 3. Zoning.

§ 153A-340. Grant of power.

Editor's Note. —
For comment entitled "Exclusionary Zoning and a Reluctant Supreme Court" (U.S.), see 13 Wake Forest L. Rev. 107 (1977).

§ 153A-345. Board of adjustment.

Decisions of a board of adjustment are not, etc. —
This section prevents collateral attacks on decisions of the Board of Adjustment. Forsyth County v. York, 19 N.C. App. 361, 198 S.E.2d 770, cert. denied, 284 N.C. 253, 200 S.E.2d 653 (1973), holding that defendant in action for violating zoning ordinance, having failed to exhaust his statutory remedies, could not challenge validity of ordinance.

Cited in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

Part 4. Building Inspection.

§ 153A-350. "Building" defined.

Mobile Home Deemed "Building". — See Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-351. Inspection department; certification of electrical inspectors.

(a1) Every county shall perform the duties and responsibilities set forth in G.S. 153A-352 either by:

(1) Creating its own inspection department;

(2) Creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 153A-353 or Part 1 of Article 20 of Chapter 160A; or,

(3) Contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of Chapter 160A.

Such action shall be taken no later than the applicable date in the schedule below, according to the county's population as published in the 1970 United States Census:

Counties over 75,000 population — July 1, 1979
Counties between 50,001 and 75,000 — July 1, 1981
Counties between 25,001 and 50,000 — July 1, 1983
Counties 25,000 and under — July 1, 1985.

In the event that any county shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his Department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the county's jurisdiction all powers made available to the board of county commissioners with respect to building inspection under Part 4 of Article 18 of this Chapter and Part 1 of Article 20 of Chapter 160A. Whenever the Commissioner has intervened in this manner, the county may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services.

(b) No person may perform electrical inspections pursuant to this Part unless he has been certified as qualified by the Commissioner of Insurance. To be certified a person must pass a written examination based on the electrical regulations included in the latest edition of the State Building Code as filed with the Secretary of State. The examination shall be under the supervision of and conducted according to rules and regulations prescribed by the Chief State Electrical Inspector or Engineer of the State Department of Insurance and the Board of Examiners of Electrical Contractors. It shall be held quarterly, in Raleigh or any other place designated by the Chief State Electrical Inspector or Engineer.

The rules and regulations may provide for the certification of class I, class II, and class III inspectors, according to the results of the examination. The examination shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as an electrical inspector. A class I inspector may serve anywhere in the State, but class II and class III inspectors shall be limited to service in the territory for which they have qualified.

The Commissioner of Insurance shall issue a certificate to each person who passes the examination, approving the person for service in a designated territory. To remain valid, a certificate must be renewed each January by payment of an annual renewal fee of one dollar ($1.00). The examination fee shall be five dollars ($5.00).

If the person appointed by a county as electrical inspector fails to pass the examination, the county shall continue to make appointments until an appointee has passed the examination. For the interim the Commissioner of Insurance may authorize the county to use a temporary inspector.

The provisions of this subsection shall become void and ineffective on such date as the North Carolina Code Officials Qualification Board certifies to the Secretary of State that it has placed in effect a certification system for electrical inspectors pursuant to its authority granted by Article 9B of Chapter 143 of the General Statutes. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1977, c. 531, ss. 2, 3.)

Editor's Note. — The 1977 amendment added subsection (a1) and the last sentence of subsection (b).

Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 153A-351.1. Qualifications of inspectors. — On and after the applicable date set forth in the schedule in G.S. 153A-351, no county shall employ an inspector to enforce the State Building Code as a member of a county or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate, which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.10(c) and which shall become invalid if he does not successfully complete in-service training prescribed by the Qualification Board within the period specified in G.S. 143-151.10(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 4.)

Cross Reference. — As to the North Carolina Code Officials Qualification Board, and certification of Code-enforcement officials, see §§ 143-151.5 through 143-151.17.

Editor's Note. — Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any

officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 153A-357. Permits.

Cross Reference. — For provisions specifying that permits required for installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards meet all requirements of this section or § 160A-417, see § 143-155.

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-360. Inspections of work in progress.

Cross Reference. — As to inspections by the energy and insulation inspector during the installation, alteration or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 153A-363. Certificates of compliance.

Cross Reference. — As to issuance by the energy and insulation inspector of a certificate of compliance for work done with regard to the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 153A-372. Equitable enforcement.

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

Part 5. Community Development.

§ 153A-376. Community development programs and activities. — (a) Any county is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a county may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any board of county commissioners may exercise directly those powers granted by law to county redevelopment commissions and those powers granted by law to county housing authorities. Any board of county commissioners desiring to do so may delegate to redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any board of county commissioners and any municipal governing body may by agreement undertake or carry out for each other any specified community development activities. Any board of county commissioners may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any board of county commissioners any specified community development activities.

(c) Any board of county commissioners undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any board of county commissioners proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such county.

(e) No state or local taxes shall be appropriated or expended by a county pursuant to this section for any purpose not expressly authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein provided. (1975, c. 435, s. 2; c. 689, s. 2.)

Editor's Note. — The 1975 amendment inserted "State or local" near the beginning of subsection (e).

For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 153A-377. Acquisition and disposition of property for redevelopment. — In addition to the powers granted by G.S. 153A-376, any county is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:
   a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
   b. Appropriate for rehabilitation or conservation activities;
   c. Appropriate for housing construction of the economic development of the community; or
   d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of G.S. 153A-176, or the procedures of G.S. 160A-514, or any applicable local act modifying such procedures. (1977, c. 660, s. 2.)

§§ 153A-378 to 153A-390: Reserved for future codification purposes.

ARTICLE 19.

Regional Planning Commissions.

§ 153A-391. Creation; admission of new members.

Local Modification. — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions.

Stated in Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975).

§ 153A-445. Miscellaneous powers found in Chapter 160A. — (a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.
(3) G.S. 160A-487. — Financial support for rescue squads.
(4) G.S. 160A-488. — Art galleries and museums.
(5) G.S. 160A-489. — Human relations programs.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties. (1973, c. 822, s. 1; 1975, c. 19, s. 61.)

Cross Reference. — As to authority of counties, cities and towns to appropriate money for payment to the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing a local government center in the City of Raleigh, see § 160A-495.

Editor's Note. —
The 1975 amendment corrected an error in the 1973 act by substituting "Article 20" for "Article 21" in subdivision (2) of subsection (a).

§ 153A-446. County may offer reward for information as to persons damaging county property. — The board of county commissioners is authorized to offer and pay rewards in an amount not exceeding five hundred dollars ($500.00) for information leading to the arrest and conviction of any person who willfully defaces, damages or destroys, or commits acts of vandalism or larceny of any county property. The amount necessary to pay said rewards shall be an item in the current expense budget of the county. (1975, c. 258.)

Chapter 156.

Drainage.

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

Sec.
156-59. Board of viewers appointed by clerk.
156-74. Adjudication upon final report.
156-76. Compensation of board of viewers.

Article 6.

Drainage Commissioners.

156-81. Election and organization under amended act.

Article 7.

Construction of Improvement.

Sec.
156-83. Superintendent of construction.
156-88. Drainage across public or private ways.

SUBCHAPTER III. DRAINAGE DISTRICTS.

ARTICLE 5.

Establishment of Districts.

§ 156-59. Board of viewers appointed by clerk. — The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Natural Resources and Community Development; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. —

The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the second sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 156-74. Adjudication upon final report. — At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Natural Resources and Community

Development may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the fourth sentence of the first paragraph.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the fourth sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 156-76. Compensation of board of viewers. — The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Natural Resources and Community Development and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C. S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the second sentence.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 6.

Drainage Commissioners.

§ 156-81. Election and organization under amended act.

(g) Compensation. — The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior

court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars ($25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(1975, c. 494.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "twenty-five dollars ($25.00)" for "twelve dollars ($12.00)" in the third sentence of subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

Article 7.

Construction of Improvement.

§ 156-83. Superintendent of construction. — The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Natural Resources and Community Development, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1973 amendment, effective July 1, 1974, substituted "Department of Natural and Economic Resources" for "Department of Water Resources" in the second sentence of the first paragraph.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 156-88. Drainage across public or private ways. — Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Department of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of

the drainage district, and it shall be the duty of the Department of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Department of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Department of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Department of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Department of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Department of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this Subchapter crosses a public highway or road, not under the supervision of the Department of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Department of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private roads; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Department of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. —
The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" throughout the section.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1977

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1977 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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